OBSERVATIONS

ON THE LATE

PRESIDENTIAL VETO,

TOGETHER WITH

A PLAN FOR A CHANGE OF THE CONSTITUTION RELATIVE TO THIS POWER.

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PRESIDENTIAL VETO.

The amendment, which it is the principal object of this pamphlet to propose, of the provision of the Constitution which relates to the Veto power of the President, was first suggested by that proposed by Mr. Clay in the Senate at the present session of Congress. The objects of that provision are at present little understood generally, or rather have been nearly forgotten, — and its effects, if it be literally construed, according to the mode of interpretation which now prevails, little appreciated. The defects of a written Constitution can only be corrected or supplied, in the same manner that a Constitution which is the result of precedent, of custom, and of a consent gradually and occasionally given, is formed ; by the effect upon the community of particular examples, bringing home to every man's business and affairs the bearing and the relationship of the diverse interests and institutions, which are the elements of the social system, and suggesting the proper mode of combining and harmonizing them. To create or to alter its fundamental laws, to overcome that instinctive hesitation at change, which is always great in proportion to the importance of that change, requires a general agitation and movement of the whole society, which can only be the result of a grievance universally and strongly felt throughout the community.

The question of the United States Bank, which was that on which Mr. Clay relied to produce that state of the public mind, in which it might be impregnated with the proposed change, did not prove on experiment to be of an interest suf-

ficiently extensive or sufficiently exciting for that purpose. Amid the ruin of the old banking system, and of the United States Bank especially, which was just disclosing to the light some of the most alarming and revolting secrets of its internal mechanism, a serious doubt began to be entertained as to the expediency of a new Bank, and a general apathy felt on this subject, even in the ranks of the Whig party, which they did not care to express.

If, however, the power, of which the United States Bank has been the first victim, (whether deservedly or not, it matters not, but, as I believe, at least fortunately,) is as ill advised, and as mischievous, as I think, it cannot fail sooner or later to find a subject for its exemplification, if it has not done so already, of which the interest and importance shall produce that state of the public mind, which has been described as necessary to the accomplishment of so momentous a change in our Constitution; and the character and political position of the present President seem so admirably and exactly contrived to make him the instrument of a consummation so devoutly to be wished, that I cannot doubt, if we may impute any design to the seeming caprices of destiny, that this is to be the result of that extraordinary combination of accidents, which have made Mr. John Tyler President of the United States of America.

Extremely ignorant both of the science and the art of government, both of its general principles and practical rules, and of all those subjects of finance and of political economy connected with it; having a stock of political information and political principles made up entirely of those commonplaces which have happened, in a public life of some twenty years, as they were bandied about from party to party, to fall among his articles of faith, with a mind extremely illogical, and apparently incapable of any profound or elaborate reasoning, he finds himself at the head of the most grotesque, the most ill-assorted, the most disorderly rabble of opinions that were ever assembled in the same creed. To these, as generally

happens to men of narrow understandings, who have great pride with no profoundness of opinion, he considers himself unconditionally pledged. Endowed with an inordinate and almost inconceivable vanity, the first germ of which he must have received from nature, but which, no doubt, has gathered fresh strength from the effect produced on a mind of ordinary powers by a success in life out of all proportion to his abilities, he is equally inaccessible to argument and accessible to flattery; obstinate and suspicious; at the same time ready to go the greatest lengths to maintain his opinions, and yet fearful of the consequences; incapable of forming any opinions of his own, while he adheres obstinately to those of other men, without even the power of modifying them; it is impossible to present the picture of a character better calculated, in the exercise of an ill advised power, to realize all the possible objections to it, and to render it both odious and contemptible. A man of tact, of ability, or of brilliancy might contrive either so to exercise such a power as to palliate the objections to it, or to give such specious reasons for it as to make it appear to be justifiable. Of an ambitious man it might be said, that the fault was not in the Constitution, but in the ambition which might equally abuse any other prerogative. But Mr. Tyler will not fail to prove at each exercise of this prerogative, if he has not done so already, that a certain degree of stupidity, without any definite scheme of ambition, is all that is necessary, with this provision of the Constitution, to establish a temporary dictatorship; and will be sure to abuse so dangerous a power, in a way to make it as mischievous and as annoying as possible.

Any argument, which should defend this last instance of the exercise of the Veto, cannot stop short of this principle, that whatever the President, acting as a Member of Congress, may *vote* against, acting as President he may *veto;* that the same reasons, that are good as grounds for the decision of each member of Congress, are good and sufficient ones for

the President acting by himself, and on the weight entirely of his own opinions and his own responsibility to exercise his veto power. The reasons, given by the President for using his veto power in this case, are in fact what would be considered a very feeble and a very inconclusive argument, if uttered by a member of Congress as the justification of the vote he was about to give.

The President, it is true, speaks of "discharging the high duty imposed upon him by the *Constitution*," but it is only after showing that it was, as he conceives, imposed upon him not by the Constitution, but by a combination of two acts of Congress itself — the Compromise act and the Distribution act. The whole argument of the message rests simply upon the assumption, that the Compromise act is a fundamental law, a sacred compact of the highest moral obligation, binding on this and on all future generations, and that the Distribution act is a part of this law, because it refers to it, and is therefore equally binding and equally sacred. The whole argument of the Message is a commentary on these two laws, upon the particular expressions made use of, upon the intention of their framers, upon the circumstances connected with them, and which go to throw light upon those intentions, exactly as if it was an article of the Constitution which was the subject of interpretation. The whole argument rests upon an assumed assimilation of these statutes to the Constitution itself. There is no pretence of any other. After speaking of the "high *moral* obligation" of the compromise act, he goes on to say, that "*he regards* the suspension of the law for the distribution of the proceeds of the public lands in certain cases as an indispensable condition of this universal acquiescence, and the harmony, and confidence, and *many other benefits* that will certainly result from it." He then states the cases in which, according to the act of September, the distribution is to cease, namely, in case of war and in case of the rate of duties being raised above 20 per cent, and adds, "nothing can be more clear, express, or *imperative* than this language.

It is *in vain to allege* that a deficit in the Treasury was known to exist." He speaks of the spirit and principle of the statute even, being binding on the present Congress. He maintains that the President may veto an act of Congress, because it *violates*, as *he conceives*, a former act, which *he regards* as essential to the universal acquiescence, and the harmony, and confidence, and the many other benefits that will certainly result from *another act*, which "*he has always regarded* as of the highest moral obligation," "whatever in theory may be its character;" and because it severs a connexion "meant to be inseparable" between the supplementary law and the original and solemn law. Meant to be inseparable—by whom? — Not certainly by the framers of the first law! — for they could not have anticipated the second; but by the framers of the second law. According to Mr. Tyler, then, it is sufficient to launch one law, which a President considers to be of a high moral obligation, upon the current of legislation, and every law emendatory, explanatory, or declaratory, which any future Congress may mean to be attached inseparably to it, will be so attached, and will float down the stream with it to all future ages.

What difference does it make, whether this connexion was meant to be inseparable? — What difference does it make "how clear, express, or *imperative* is the language," as addressed to those over whom they can have no control? and if, as I contend, both statutes can be done away with by the same power that made them, — and that power chooses to abrogate them? What difference does it make, how much harmony and confidence *has been* the result of these laws, if they no longer continue to produce it; and how can they continue to preserve harmony and confidence, when the majority of Congress are already determined to abrogate them, and when in fact the whole country is in a violent state of fermentation and discord upon the subject of their continuance? What difference does it make how long they have been acquiesced in, if that acquiescence has at last ceased? And how

can they derive any recommendation from that acquiescence, when that acquiescence is at an end? Is it not an insult to the present Congress, to tell them that that was *meant* to be inseparable, which they have a right to separate; that that is universally acquiesced in, to which they refuse their acquiescence; that that alone will produce harmony, to which they are all opposed; that that is demanded by a great majority of the people, which they, the legal, constitutional representatives of the majority of the people, protest against?

The whole question is, — Is there anything in the nature or character of the compromise act, which can prevent its being abrogated in the same manner in which it was created? Is the compromise act an exception to the general rule, which governs not only the statutory law, but even the Constitution of the United States? — And if it is, can it communicate this virtue to every other statute, which the President or any succeeding Congress shall declare, or the President *thinks* that they *mean*, shall be inseparably connected with it? Is the President to be the judge of the moral obligation of every statute, and is he to force his convictions upon Congress?

The President does not condescend to give the reasons why he "regards the compromise act as imposing the highest moral obligation." He seems to consider it sufficient that he has always so regarded it, "whatever may be in theory its character." In other words, whatever may be the technical, usual, legal, essential effect of the act itself, it is enough that he so regards it. The fact of his so regarding it is, in his opinion, enough. It is of more consequence to him as a ground of action, than the nature of the act. This doctrine certainly would put an end to all argument on the subject, if it could be admitted; and that probably was its intention. But for my part I consider that the *nature* of the transaction is *everything*, and the mode in which the President regards it *nothing*, unless based upon considerations derived from its nature, from its technical character, or, as he calls it, "its character in theory." I have never been able to find any reason

for regarding it in any different light from any other statute, except its name. But if its name is to have any effect, it would be first necessary to ascertain who gave it that name. I believe it will be found that it is a mere nick-name, that there is no more authority for it than for that of the "little Tariff Bill," "the Sub-Treasury Bill," "the Gag Law," and other equally picturesque but insignificant epithets ; and that it has just as much to do with the nature of the law it serves to distinguish, and is of about as much significance as a guide for interpretation. It would, in fact, make no difference in the nature of the transaction, if the bill had been entitled "an act to compromise, &c." Congress cannot, by baptism, give any different nature to a law. If they had called it "an addition to the Constitution," it would not have made it so. If they had entitled it "a solemn contract," it would not have made it anything else but a statute law. They were commissioned to make an act of Congress. They could make nothing but an act of Congress, having all the efficacy, the power, the permanence of an act of Congress, and no more; and having also all the frailties, the liabilities, and the conditions of such an act, — one of the most inseparable of which is the being abrogated, amended, or changed, whenever their constituents, or their successors, should find it for their interest to do so. If they agreed to anything else, they agreed to what they had no commission for, no warrant for. The compromise then consisted simply in an agreement to pass *that* law, in preference to *any other* law that might have been passed. It could consist in nothing else. Anything more was out of their power. When that law was passed, the compromise was executed and fulfilled. The passing of the act was itself the compromise. It was both agreement and performance. There were a great variety of opinions and interests to be conciliated, some demanding one law and some another ; and they were compromised by passing the law in question, instead of some other law which might have passed. But I cannot see that this could alter the nature or

the obligation of the act in which the compromise resulted, or that it would have made any difference, whether it was one of the extreme laws on either side which was passed, or some medium between them.

If the compromise had resulted not in a law, but in an alteration of the Constitution, that would have been a compromise which the subsequent legislation of Congress could not affect, and which could only be abrogated or altered by the same power and the same process by which it was entered into. But even then it *could* have been altered, for change is the inseparable condition even of our Constitution. There were difficulties and dissensions at the time of the ratification of the Constitution, which were got over by a compromise, by several compromises, — compromises between the Constitution, such as the Convention made it and a majority of the States accepted it, and the wishes of the dissenting or reluctant States. These States were then independent and sovereign States, perfectly free and unconnected with the assenting States, and driven by no compulsion to accept the Constitution. And will it be pretended that those articles, which were the result of this compromise, could not now be amended? Or that there is any principle of honor or good faith, any "moral obligation" to prevent the people whenever they please to alter or amend these articles of the Constitution, as well as all the others, when the Constitution itself provides for the alteration of the whole? Is it pretended that they are of a more sacred or obligatory nature than the rest of the Constitution? The whole Constitution is a compromise, by which it was agreed to pass that constitution in preference to some other constitution, or articles which some of the contracting States might have preferred. It is a compromise Constitution. Every act of Congress is in this sense a compromise act. They are all compromises of conflicting interests and opinions, each party conceding by way of compromise what it cannot help, and getting all it can. And is this compromise act alone of all the constitutions and

the acts inscribed on the cumbrous rolls which embody the compromises of this compromising country, to be sacred, irrevocable, indelible? Is this alone to be exempt from the universal law which, according to the first State paper in our archives, attaches itself to every social institution and every social arrangement? Strange inconsistency truly, that the same party should at the same moment approve of two different acts, one of which assumes that *constitutions* may be altered not only by the power that made them, but by a revolutionary movement of persons having nothing to do with the government, and the other maintains that an act of *legislation* cannot be changed, no matter how great the changes of opinion or of interest in which it originated! Strange inconsistency, that in the same country and by the same party, who maintain that one generation cannot bind another by the most solemn and formal stipulations, expressly binding themselves and their heirs and successors forever, it should be pretended that the moral obligation of an instrument, in its *nature* terminable, shall become from a mere vague and disputed principle of interpretation interminable! — that the same persons who repudiate the legal contracts of their agents with third persons, founded on obligations which are at the bottom of all honesty between man and man in every-day life, and essential to the mechanism of industry, and to the preservation of good faith among individuals, — should insist on those delicate moral obligations which are based only on considerations of harmony among themselves, and have no legal force whatever! Strange inconsistency, which maintains that the Constitution, the fundamental law of the State, can be indefinitely changed, and that those which are passed by a body created by the Constitution, and in virtue of powers created by it, are irrevocable and unchangeable. It is a fundamental principle in the spirit, and in the letter, and in the practice of our constitutions, that everything which does not regard *third persons* can be changed, and changed by the same power which created. The Constitution can be altered by the peo-

ple who created it, in a manner which they have prescribed for themselves, or by revolution; the acts of Congress can be altered by Congress; the regulations of the executive department by that department. But if Mr. Tyler is correct, the compromise act and all the laws "meant to be inseparable" from that act, or which shall in future be meant to be inseparable, are alone of a perpetual moral obligation, and as irrevocable as the sacred laws of the Medes and Persians. If he is correct, this act and all its supplements are an anomaly in our institutions, and an exception to the most striking and universal characteristic of their spirit.

To the allegation, that the compromise act was *intended* to be a solemn compact or compromise perpetually to be adhered to, in spirit at least, there are then no less than three separate, distinct, and sufficient answers. The first is, that the intentions of the persons by whose agency it was concluded upon are so difficult to be ascertained, so impossible to be proved, and the testimony of the persons themselves is so various, that it is impossible to make them the ground of any obligation. The second is, that the act does not bear upon the face of it any mark of any intentions extending beyond the year 1842; that it contains no provisions regulating anything beyond that year; and that whatever may have been the intentions of the authors, their express regulations, although they might very well have been abrogated, have in fact been suffered to take full effect, for the time prescribed. That time is now expired, and it now becomes necessary to make a new compromise; whether in the spirit or the letter resembling or differing from the preceding one, it is for those, whose interests are to be again compromised, to say. The third is, that if the instruments of the compromise really did intend to do anything more than to pass a common act, having exactly the obligation and "the character" of a common act, and no more, they exceeded their powers as agents of the persons whom they represented, and whose interests they undertook to compromise, having received no

commission to make any other than such acts. There is in fact no reason to suppose that they intended to surpass their powers; no reason to suppose that they meant to give to this act any other than its legal and customary effect, any other character than what Mr. Tyler calls its "character in theory," which he admits, by this expression, may well be different from that which he "has always regarded it as importing."

Another reason besides its name, which has erroneously led some persons to imagine that the compromise act had some character different from other acts, is, that it contains regulations relating to different and distinct points in the future, and changing as to those points. These appear like an assumption of a power to prescribe and regulate peremptorily for the future. But there was this implied and necessary condition arising from the nature of the act of regulation itself, —"*provided* no future act of Congress otherwise ordains," of which the Congress could not by any terms, expression, or power of theirs divest it. Why should an act, relating to particular and fixed points of time, have more authority, or any other authority, than one which, like most acts, is for all time, *unless*, —*unless* in both cases, it is otherwise ordered by the competent power. The condition is understood for both. It is equally efficacious for both; and I do not understand why it does not apply with equal force to a law of which the effect at different times is different, as to one of which the effect is intended to be forever the same.

This measure, (the suspension of the Distribution act,) says Mr. Tyler, is "in *my judgment* called for by a *large number*, if not a great majority of the people of the United States." What is this but that eternal pretext of usurpation, since usurpation was ever heard of, the alleged will of the people? Is it not the everlasting pretended warrant of every power which has, in the history of mankind, made itself despotic, at the expense of the other departments of the State? Was it not by this assumption, and by none other, that

Augustus, that Cromwell,* that Napoleon (those three names which are the type to every man's mind of the transition from the rankest democracy to the most absolute despotism) absorbed all the powers of the State? What security is there for the powers and the functions of any department of the State, if another may invade them upon a supposition so easily assumed, so difficult to disprove? If it may take for granted not only all that it hopes, but all that it wishes? What security have the legislative department of the government against the absolute dictation of the executive, if the executive is to be the judge of what acts of their predecessors have a *moral obligation* upon them, — of what acts "the *majority* of the people" call for, — what acts are necessary to produce harmony, and *many other benefits*, resulting from preceding legislation? of what acts enjoy a general acquiescence? of what acts are called for by "the state of the public credit and finances?" and if the executive is to reject a money bill of the House of Representatives, because in his opinion there is a more proper way, — a way prescribed by a former legislature, or formerly preferred by the present legislature, or a way impliedly pledged to the public creditors of raising the funds required, and that he shall not allow them to have recourse to any other?

Mr. Tyler asserts that "the Distribution act could not have become a law without the guaranty in the proviso of the law itself." Guaranty! Guaranty to whom, — by whom? — who are the parties to this guaranty? The word in this application is nonsense. Does it mean that at the passage of every law those who vote for it guaranty to those, who only vote for it under certain conditions, the perpetual adhesion of all

* There is a confused canting about the Tyler messages which are not unlike some of those homilies of old Noll, by which he always prefaced some deed of daring usurpation. One can hardly give Mr. Tyler credit, however, for any deep laid schemes, or any purpose beyond the ostensible object. It shows, however, that the style of reasoning of usurpation is very much the same, whether that usurpation be from instinct or design, — from imbecility or ambition.

future legislatures to those conditions? It is then the Members of Congress who are both the guarantors and the guarantied. By what right? Congress may, I admit, pledge the faith of the country to third persons; but where they have not done so, can they guarantee to each other the perpetuity of their own laws, and of every part of them? If they may thus guarantee a part of a law why not the whole? If Congress can abrogate the whole of a law, *a fortiori*, they can abrogate a part. If one Congress can pass a law which a former Congress rejected altogether, and upon any conditions whatsoever, they may surely pass a law, without a certain condition, which with a former Congress would have been indispensable. It was perfectly within the power of a former Congress to pass a Distribution law, with or without the proviso in question; it is equally in the power of the present Congress to do the same, or to annul the law altogether. The whole argument, then, rests upon a single idea, in point of theory, (and there is no other in the whole message,) that one Congress may, by so intending, in all cases, control all succeeding ones, and by a single assumption in point of fact, that they did so intend. The whole argument, in short, rests upon a single idea and a single fact, both of which are equally false.

Another argument of the same kind is, that it "would divert from the treasury a fund *sacredly pledged* for the general purposes of the government, in the event of a rate of duty above twenty per cent being found necessary for an economical administration of the government." One would think that, if the public creditor was interested in having this fund pledged to him, it would be as long as the government refused to appropriate more than twenty per cent duties, — refused, in short, to assess itself at a sufficent rate to pay its expenses and debts, whatever they might be, — and that as soon as it showed a disposition to appropriate a sufficient sum for that purpose, although it should exceed twenty per cent on the importations, it would become a matter of indif-

ference to him, whether another fund was appropriated to the same use or not. If the raising the duties above twenty per cent *diminished* the fund to which the public creditor was to look for the payment of his claim, he would have a right, or if not a right, an interest to complain of the giving away of the fund coming from the public lands to the States; but as it increases it, it is difficult to see why he should make one increase of this fund a ground in honor for asking for another increase; why he should wish to make one addition to the fund a condition of another addition.

If Congress gave away the fund, and at the same time neglected to make a sufficient appropriation, the public creditor might have cause to complain; but how is their faith to him violated, whatever they may do with this fund, if, independently of this fund, they appropriate enough to satisfy all his claims. The word "*pledged*" is, like the word "*guaranty*," in this application, sheer nonsense. To whom was the public faith pledged? pledged by the members of Congress to each other, as the proviso was said before to be guarantied by them to each other? The public faith is pledged by the contracting of the debt, but not pledged for any particular fund of payment. As well might the public creditor in England complain that Sir Robert Peel, in proposing a new mode of levying the taxes, although it increases the produce of the taxes, had proposed a violation of the public faith. As well might he pretend that the exact amount of duty on timber, on corn, and on everything which was levied at the time of contracting the debt, was sacredly pledged to its payment. It assumes, in short, that the mode of raising the public revenue can never be changed as long as a single debt remains unpaid.

Congress proposes to appropriate a sufficient amount of customs to pay the expenses of the government, and the principal and interest of the public debt; and Mr. Tyler tells them, "This would be a violation of the public faith, — you have promised to pay your public creditor out of the proceeds of the public land."

It is really too inhuman in those persons, who are making use of Mr. Tyler, not to furnish him with better reasons, when there are so many, which, if they did not justify, would at least have the merit of corresponding to the boldness and magnitude of the attempt which he has, apparently unconsciously, been making upon the prerogatives of the legislative department. It is unwise to allow him to appear both criminal and contemptible in the eyes of the nation, instead of making him appear, as he might, merely criminal.

But absurd as is this extraordinary document as an effort of reason, the logic of it is hardly so provokingly puerile as the spirit of it is insulting. There is throughout a mixture of wheedling and dictation, of coaxing and of force, of flattery and reproach, of humility and self-sufficiency, of facility and obstinacy, of a readiness to concur in everything, at the same time that he refuses to concur in anything, — of a desire of concession and harmony, with a determination to concede nothing himself, — which, coming from a great man, might inspire alarm, but from Mr. Tyler, produces only irritation. He speaks of the "superior wisdom of the Legislature," and of his having the "sincerest wish to acquiesce in its expressed will," at the same time that he attributes to them an insensibility to moral obligations, and a disregard of the public faith; at the same time that he annuls their acts as immoral, *erroneous*, and dangerous, asserts that a law, which they abrogate because they consider it prejudicial to the interests of their constituents, is "replete, if adhered to, with good to every interest of the country;" insinuates that they are resuming "a scheme of indirect taxation, founded on a false basis, and pushed to a dangerous excess"; and undertakes to tell them, the Representatives of the people, — them, the very persons, by being pinned to whose skirts he was dragged unnoticed into power, that they are doing what is, "in his judgment," opposite to the wishes of a large number, if not a great majority of the people of the United States." He expatiates with much unction upon

the advantages of concord, of harmony, of the delights of that "repose which always flows from truly wise and moderate counsels," while he considers a few feeble abstractions of his own a sufficient reason for opposing his individual opinion to an act of Congress which would have terminated, at least for the present, the question which is agitating the whole country from one end to the other, and put an end to that uncertainty which has so long interrupted the operations of industry. He affects a high regard for an act of one congress, because it produced peace and harmony, ten years ago, while by his obstinate and immovable opposition he makes himself the sole obstacle to a similar compromise of the present congress, which alone can produce peace among the conflicting interests of the present time. He expresses his "entire willingness to coöperate in all financial measures of a constitutional character," at the same time that he rejects a measure for that purpose which has nothing to do with the Constitution, upon grounds which it is not pretended have any connexion with the Constitution, and every one of whose provisions he has separately approved of. And then he has the audacity to say, that "*he believes* that the proceeds of the sales of the public lands, being restored to the Treasury, or more properly to speak, the Proviso of the act of September, 1841, being permitted to remain in full force, a tariff of duties may easily be adjusted, which, while it will yield a revenue sufficient to maintain the government in vigor by restoring its credit, will afford ample protection and infuse a new life into our manufacturing establishments." What is this but an intimation that, *unless* they do permit that proviso to remain in full force, *he does not believe* that such a tariff of duties (to which the only obstacle is his own will) can be adjusted; or in other words, that it shall not be adjusted; and this too when he knows that Congress is at this very moment engaged in making a tariff for that very object, and supposed by them (who in every representative government in the universe are the sole and exclusive judges

how they shall amerce themselves to support the government) to be amply sufficient and perfectly appropriate for those purposes. He speaks of the extraordinary and disgraceful state of the public credit, and of "the indispensable duty of all concerned in the administration of public affairs to see that a state of things, so humiliating and so perilous, should not last one moment longer than is absolutely necessary," in the same breath that he opposes himself to an act which would have revived at once the credit and business of the country; at the same time that by giving the strongest, the most striking, the most appalling example of the difficulty of carrying on a government under our Constitution, he adds new strength to the doubt, which, with the smallest understanding of the subject, he must be aware is the chief flaw in the basis of public credit, at the same time that, by preventing the revenue being made at once equal to the expenditure, and thus alarming the capitalist with the fear of a perpetual competition of the government in the market of its own stock, he takes away the chief inducement for an immediate contract for the loan, — for the immediate extrication of the government from a situation, by which he pretends to be so much humiliated and alarmed.

I have made this analysis of the late Veto Message of Mr. Tyler, not because I thought the argument it contained really deserved or required an answer, but to show how flimsy a pretext may be made an argument for this encroachment of the Executive upon the Legislative department, and how irresistible is the tendency which urges the Executive downwards, when once launched upon this irresistible slope towards absolute power. The Veto, which but a few years ago, after so many years forming a part of the Constitution, was looked upon as an extraordinary and portentous act, only to be used on very imperative and peculiar occasions, has now got to be one of the ordinary chances of legislation. The President uses it as freely, or at least as the case in hand proves, on as slight a ground, as he could give his vote. Mr. Tyler in his first Veto

Message thought it necessary to appeal solemnly to the form and the meaning of his inaugural oath. He thought it necessary to make out a case, in which the alternative was a surrender of all "claim to the respect of all honorable men, all confidence on the part of the people, all self-respect, all regard for moral and religious obligations, without an observance of which no government can be prosperous, and no people can be happy," and "the commission of a crime which would justly subject him to the scorn and ridicule of all honest men." In the second Veto there is a little less solemnity. The sanctions are a little less terrible. But the *Constitution* is still the pretext, and is particularly appealed to as having entrusted this power to the Executive, "*chiefly* for its own preservation, protection, and defence," which he must either exercise or commit "an act of gross moral turpitude." In this message, too, he speaks of his "anxious solicitude to *meet* the wishes of Congress," says, that he has been "ready to yield *much* in a spirit of conciliation to the opinions of others, and after alluding to the immense mass of labor which they had performed together "at a session very unfavorable both to health and action, and which he trusted would prove highly beneficial to the country, and fully answer its just expectations," and to the good fortune and pleasure which he had had so far to concur with them in all their measures, except this," he appeals, with a sort of pathos quite touching, to the good fellowship of this common service in the employ of their country, to the *camaraderie* of their brilliant achievements together in a hot, fatiguing, and dangerous campaign, and pathetically asks, "why should our opinions on this alone be pushed to extremes?"

How different is all this from the tone of the last Message. After having twice trod "the primrose path of dalliance" with this much coveted power, and had time to familiarize himself with its awful charms, he no longer coquets respectfully with it, but seizes it boldly by the hand. He has gradually accustomed himself to that position to which most men

would only be reconciled by some ambitious and criminal design, that of being in opposition to all the other branches of the government. He has forgotten already that circumstance which ought to have been conclusive, that those, whose opinions he had taken it upon himself to overrule by the exercise of a power obtained only by inadvertence, were selected expressly to represent the people in the matters under consideration. He has braced himself up in the mean time with a copious draft of flattery. It is no longer the Constitution from which he takes his text, but "*a salutary law*," which "*he* has always regarded as imposing the highest moral obligation," and "the clear, express, and imperative language" of another *statute* "meant to be inseparable" from this first law, which it would seem not only *imports* a high moral obligation, but is capable of communicating its "virtue of holiness" to every other legislative shoot which may be grafted upon it. The alternative of the Veto is no longer the scorn and ridicule of all honest men, an act of gross moral turpitude, and the forfeiture of all self-respect, and all regard for moral and religious considerations. The motive now is the "repose which flows from truly wise and moderate counsels," "the introduction of harmony among all the parts and all the several interests of the country," "the call *in his judgment* of a large number, if not a great majority of the people," "the general acquiescence of the whole country, the manifestation of public opinions in all quarters." We hear no more of those "illustrations of his conscience," which had begun to be the staple of those precious homilies.

He talks as before of mutual concession, but it is only a concession to his own opinion; he talks of harmony, but it is only the harmony which is to arise from a universal submission to his views of the Constitution, to his ideas of moral obligation; he talks of the will of the majority, but it is not of the majority which the legislative majority represents, but a majority of his own imagining; he talks of a general acquiescence, in which they are not included; he talks "of a mani-

festation of opinions in all quarters," but it is according to his own reading, and he chooses to read it from every page upon which the public mind is transcribed, except that public record which the Constitution has expressly provided for this purpose, the votes of Congress.

And yet Mr. Tyler is neither of the temper nor of the stuff that tyrants are made of. He has apparently much more vanity than ambition. If there is any truth in Phrenology, he must have a much larger development of self-esteem than love of approbation, and a much larger development of either than of causality or comparison.

Not only does the act vetoed steer entirely clear of the Constitution, not only does it not contain any provisions to which disconnectedly and of themselves Mr. Tyler has not given his approbation, not only does it concern particularly matters which have been time out of mind considered in all countries, and expressly so declared by the Constitution in this, as belonging peculiarly to the most popular branch of the government, but the effect of it upon the march of government, upon the efficiency of his own administration, is infinitely more important, infinitely more material to the accomplishment of his own peculiar duties, than any bill could be for the regulation of a fiscal agent. By the two former Vetos he merely deprived his administration of a legalized mode of receiving, safe keeping, and disbursing the public revenue. By the present Veto he has deprived his administration of the means of going on at all. As regards himself, it is so suicidal, that it cannot be for a moment confounded with ambition. Ambition is more intelligent. It is probably the first time in history that an administration has been known to refuse the means of carrying on the government, merely because it did not quite approve the mode of raising them, or rather because it preferred some other; and denied to the people the right to tax themselves for its support, because they did not tax themselves quite to its mind. That this should be done by an administration without a party, without

credit, bankrupt and unpopular, and already sinking under its difficulties, — that an administration, which should be thankful, that cannot be too thankful, that those who have the power of granting the taxes should not seek to embarrass it and drive it from power by withholding from it the necessary supplies, — should reject those supplies, although every way sufficient, because the mode of raising them is not exactly the one, or does not include the one which it thinks expedient, does seem to border somewhat on insanity.

It is impossible, in short, to imagine a case in which the power in question could manifest a greater tendency to abuse, a greater facility for exaggeration; or which could more forcibly illustrate the impossibility of the government's being carried on, or the danger of its being often brought to a stop, with such a triple complication of the legislative power. The community is at present so stunned with this blow to their industry, so occupied with the effect it is to have in prolonging those sufferings which have so long required all their care, that they do not look at the still more fatal and permanent effect which it is to have upon the Constitution, and upon the present march of their government. Their own industry, which has been so long in distress, and is almost at its last gasp, has all their sympathy and all their concern. Their political Constitution they think is so strong, they have such confidence in its strength, that they do not give one moment's anxiety to the trials and the exposures which it undergoes. But whatever may be the effects of this exercise of the veto power upon the industry of the country, of which it wantonly prolongs the inactivity, who, that takes time to consider it, can anticipate, without much more serious alarm, the effect upon the government of the country of this collision between the Executive and the Legislature? — Who can see any prospect of its termination, without a concession to the Executive, which would be an act of cowardice, a selling of their political birthright for their mess of pottage, which, much as the whole community in this part

of the country is interested that it should be made, so far as his property is concerned, nothing can justify, except a determination to apply a different and a better remedy to the abuses, for which this act of usurpation might serve as a precedent, — the only remedy which can be permanently effectual, the only one which can be applied without a contest, and without an interruption of the functions of the government, a change of the Constitution? If the Constitution is to remain as it is, ought Congress to yield to the President any more than he to them? Ought the Legislature to allow the Executive to dictate to them the mode of raising the taxes, if they can by an exercise of their powers prevent it? What right has he to object to their taxing themselves in their own way, or to any extent which they please? What right has he to compel them to limit their power of taxation, any more than he has to compel them to increase it, by a threat of stopping his own government? If they are willing to tax themselves more than they need, rather than to renounce the performance of what they consider an act of justice, or the execution of an act of policy, what right has he, when he has assented to the justice, to the policy, and to the *constitutionality* of that act, to compel them by a monstrous, tyrannical, unconstitutional exercise of his prerogative to renounce it?

We all know the impracticable, irritable obstinacy of Mr. Tyler. What then, with the Constitution as it is at present, is to be the result of this collision, in which he *will* not, and Congress *cannot*, recede without abandoning their most sacred duty? What is to be the effect of a bankrupt treasury; of a government without the means of paying its debts or its expenses? Is there any mode by which Congress may extricate themselves from their present situation, without such an abandonment of duty? If Congress is reduced to the necessity of defending itself against such a usurpation of the President, not by a change of the Constitution, but by a vigorous exercise of their own prerogatives, — I see but one, and

that is impeachment. If they neglect that method of confining the different parts of the government within their allotted spheres, which is furnished to them by the nature and mode of formation of our Constitution, they must by necessity adopt that, by which, in governments founded on precedent, each part restrains the others within their own limits, — a vigor in the exercise of their own powers for defence proportioned to that of those by which they are invaded. In the present case the duty of defending their own prerogative, and of opposing a dangerous precedent of usurpation, imposes upon Congress the alternative either of an impeachment or of an amendment of the Constitution. The disorder and delay which an impeachment would produce in the administration of affairs, the folly of making such a contest a regular part of the mechanism of our government, when the Constitution offers us so obvious a remedy, is therefore one of the principal arguments in favor of an amendment of the Constitution, and is admirably illustrated in practice by the case in hand. If there is in this case no right of impeachment, it is only because the proper remedy is a change of the Constitution. But with the Constitution as it is, although, for various considerations peculiar to this case, and still more because the enormity of the abuse and the tendency to still further excess which it discloses, must ultimately result in a change of the Constitution, I should be sorry to see it made use of. I cannot but think that an impeachment *might* very well be resorted to, and that if Mr. Tyler escapes it, he will not owe it to a want of constitutional power, but to the policy and prudence of a party from whom certainly he has no right to expect indulgence.

The Constitution provides that "the President, Vice President, and other civil officers of the United States shall be *removed from* office on impeachment for, and conviction of treason, bribery, or other high crimes and misdemeanors." It is a common notion that these high crimes and misdemeanors must be intentional violations of duty. But it seems to me

a much more just and necessary construction would be to include under it any grave maladministration, whether arising from incapacity, misconception, or usurpation intended or mistaken. I can imagine no case of maladministration, no case of incapacity, no case of usurpation which can call more imperatively for the remedy of an impeachment, than one which, like the present, brings the government to a stop, and in which the executive, by encroaching upon the legislative power to an extent which would make our government purely monarchical, and by requiring their submission as the condition on which the government is to go on, either compels an absolute obedience to his will, or puts a stop to all the mechanism of government, makes the State a bankrupt, and subjects us to the danger of a revolution.

It is said that the President here merely exercises a constitutional right, that he merely exersises a power which the Constitution gives him, and that he cannot be impeached for any exercise, however excessive, of a constitutional right. But the spirit is as obligatory as the letter ; and in this case it may be truly said that the letter killeth while the spirit maketh alive. If the House of Representatives and two thirds of the Senate, with the Chief Justice, should be of opinion that the object of the veto power was not to give to the President a share in the legislative power, — to make a legislature with three branches, but to give it to him for the purpose, and to be exercised in the manner in which it had been exercised in all the countries in which it existed at the time of the formation of our Constitution, and to prevent wilful and flagrant violations of the Constitution ; if they should be of opinion that to use his Veto for any other purpose is to usurp a legislative power which he was not intended to have ; if they should find that in consequence of this usurpation, which they were bound by their duty not to submit to, the government was brought to a complete stop, the Treasury bankrupt, the public faith violated ; I do not see why the House of Representatives should not impeach, and the Senate remove him.

"*All legislative* power herein granted," says the first section of the first article of the Constitution, "shall be vested in a Congress of the United States, which shall consist of a Senate and a House of Representatives." The President is not even made a part of this *Congress*, — of this legislative power, as the King is of the Parliament, or legislative power in England. But if the President is to use literally, and to the full letter, his veto power, if he is to use it as Mr. Tyler has done, I do not see that he wants any other to make himself absolute dictator, and to absorb all the powers of the government. If the President is to make this absolute, unlimited, and literal use of his Veto, I know of no power of the House of Representatives to counterbalance it, to bring it into harmony with theirs, and to prevent its being downright despotism, but the power of impeachment. I know of no power of theirs, or any other branch of the government, behind which they can intrench themselves, and by which they can make good the defence of their legislative power, except by giving a commensurate extension, a proportionate vigor to this power of theirs. I think that if the Constitution could not be changed, they would not only be justified, but are called upon, by their regard to the Constitution, to exercise it for this purpose. If the President will not content himself to use this power for the purpose for which all cotemporary history, — all cotemporary exposition demonstrate that it was intended, the protection of his own prerogative, and will make use of it to invade their peculiar province, they can only defend themselves, by giving an equal vigor, an equal extension to the powers with which the Constitution has armed them.

There could be no better illustration of this position than the present emergency. If the Congress should refuse to yield to the opinion of Mr. Tyler, and should adjourn without passing any revenue bill which he could approve, if he should again convene them, and with the same result; when, I ask, is this difficulty to terminate, if we are not relieved

from it by an impeachment? I see no other, except a revolution, a separation of the States, or a new convention for the purpose of altering the Constitution.

With a President so honestly and obstinately fixed in his purposes, with a character so impracticable as Mr. Tyler, there is no other way by which they can get out of this dilemma, until his term of office expires. With our Constitution, some such provision, some such power of removal is much more necessary than in England, where there are various ways of putting the departments of government in that state of harmony which is necessary for carrying on the government. Had Mr. Tyler been prime minister of England, if the King had not removed him, his colleagues would all have deserted him. No one would act with such a man in a country, in which there was any mode of getting rid of him. The Commons might have moved for his removal; and if the King should adhere to his minister, a new election would either bring in a Parliament in harmony with the King and his minister, or the King would have to submit to the new Parliament. But in this country, when such a disagreement takes place, both parties being determined to adhere to their opinions, one from obstinacy, and the other from principle, nothing but the expiration of his term or an impeachment, a revolution or a convention, can put an end to the perfect and entire cessation of all govermental action.

We are told that this would be too severe a punishment for Mr. Tyler, that he has acted to the best of his conscience and judgment, and that, after all, it is but an error of judgment. But in a statesman, in a public servant, it is not always the criminality of the act which is the motive of punishment, but sometimes a necessity of state. In such stations incapacity, or misconception, is often as much a crime, as much a misdemeanor as conspiracy, and an unintended usurpation as a criminal one.

It is crime enough that Mr. Tyler, by arbitrarily encroaching upon the legislative department, and by making their sub-

mission the condition of his coöperation with them, has disabled himself from carrying on the government. It is enough that he cannot carry on the government, and that it is his own fault. The criminality of the usurpation consists in its effect. The state necessity consists in the necessity of the government going on, and going on without usurpation.

We are told that the Whigs have been trying to "head Captain Tyler," that they have endeavored to drive him into a corner, to reduce him to insignificance. But is it to reduce him to insignificance to counsel him to remain within his own constitutional powers? Would a President of the United States, even *without* the veto power, be insignificant? And can he be made insignificant by being compelled to exercise it, while he has it, only for the purposes for which it was granted to him? If it be to reduce him to insignificance, to wish him to concede to them in those particulars where it is of their province to decide, is it not to reduce them to an insignificance much more humilitating, to call upon them to yield their opinions to his in matters of their own prerogative? It is not they who have invaded his province to reduce him to insignificance. They have only, by repelling him from theirs which he had invaded, endeavored to reduce him to a just sense of his position and powers, and to a respect for theirs. Let Mr. Tyler guard himself well from this exhortation of his flatterers, or of his own vanity, "not to allow himself to be reduced to insignificance." It is the treacherous sentiment which plays the part of ambition to feeble minds and feeble characters, and inspires the desire for tyranny, without the power of attaining it.

Among the most discouraging symptoms, as to the stability of our institutions, are the total oblivion and decay of the original spirit of our Constitution, and the apathy with which an attempt, which was the very first on the list of grievances charged upon a monarchical government in the Declaration of Independence, is regarded by a party styling itself the dem-

ocratic party. They do not seem to care anything for the integrity of the Constitution, or for the ultimate effects which a Presidential Veto is to have upon it, so long as it serves their ends and thwarts those of their adversaries for the time. "He has," says this document, now embodied into the Constitutions of all the States, or at least prefixed to them as a guide in their interpretations, "He has refused his assent to laws the most wholesome and necessary for the public good." "He has forbidden his governors to pass laws of immediate and pressing importance, till his assent could be obtained, and when so suspended he has utterly neglected to attend to them. He has refused to pass other laws for the accommodation of large districts of people, unless those people would relinquish," &c. &c.

"He has dissolved representative houses repeatedly for opposing with manly firmness his invasions on the rights of the people. He has refused for a long time after such dissolutions to cause others to be elected, whereby the *legislative powers*, incapable of annihilation, have returned to the people at large for their exercise ; the State remaining in the mean time exposed to all the dangers of invasion from without and convulsions from within."

These were truly great grievances, and the more annoying that they were such as the King would not have thought of inflicting on his subjects at home, and to which the colonies alone were subject.

Such is the propensity of power ! — Such is the pride of opinion ! — At the end of fifty years we find our own little republican monarch, whose position does not furnish the same guarantees for justice and impartiality with that of the King of England, — (those of being raised above the motives of faction, or the influences of peculiar and sectional interests, and of acknowledging nothing but a large and general sympathy and community of interest with the whole mass of his subjects,) recommencing, after as long a cessation from usurpation as can be expected, where the opportunity

is so obvious, the same system of vexation and of grievance, not upon a colony, but upon the people in the midst of whom he dwells, and whose power he acknowledges.

The amendment I propose is as follows:

I. Whenever the President shall not approve a bill passed by both Houses of Congress, he shall return it with his objections as at present.

II. If the ground of objection be other than the unconstitutionality of the bill, it may still become a law, notwithstanding the objections of the President, if passed by a majority of two votes in the Senate, and by a majority in the House of Representatives equal to the average number of the representation of one State in that body.

III. If the ground of objection be the unconstitutionality of the bill, the question of its constitutionality shall be referred to the Supreme Court of the United States.

IV. In case of such reference, the President and the two Houses of Congress shall, within one week from the return of the bill by the President, respectively cause to be prepared, by persons whom they shall appoint for that purpose, an argument in writing on such question of constitutionality, and to be presented to the Supreme Court.

V. Such reference shall, as soon as presented with the arguments on both sides, interrupt and exclude all other business before the Supreme Court until decided.

VI. In their decision of the question, the Supreme Court shall be governed by the same principles of interpretation, and of authority or precedent, as if the question arose between individuals.

VII. The bill objected to, if the only ground of objection by the President be its unconstitutionality, shall at once become a law by the decision of the Supreme Court in favor of its constitutionality, and without the signature of the President.

VIII. The arguments presented to the Court, with its decision and the grounds thereof, which shall be delivered in writing, shall be immediately made public.

If the plan here proposed be compared with that for "a Council of Revision" proposed by Mr. Randolph of Virginia, in the 8th of the Resolutions presented by him at the opening of the Federal Convention, (which Resolutions became, to use the words of Mr. Madison, "the basis on which the proceedings of the Convention commenced, and to the developments, variations, and modifications of which the plan of government proposed by the Convention may be traced,") it will be found, I think, to retain all the advantages of such a council, while it obviates all the objections, which were made to it, either in the Convention or the Federalist, and which drove the Convention to adopt the veto power as it now exists, "*sub silentio*," (as Mr. Madison expresses it in his report,) and, as it would seem, with evident hesitation and reluctance, after much opposition, even from those who ultimately voted for it, and apparently because the Convention did not know where else to place a check, of which the necessity was almost unanimously admitted.

Mr. Randolph's Resolution which, with the debates on it, may be found in the Madison Papers, vol. 2d, pp. 733, 783, and 329, and p. 809 et seq., is as follows:

"Resolved, That the Executive and a convenient number of the Judiciary ought to compose a Council of Revision, with authority to examine every act of the national legislature before it shall operate, and every act of a particular legislature, before a negative thereon shall be final, and that the dissent of the said council shall amount to a rejection, unless the act of the national legislature be again passed, or that of a particular legislature be again negatived by —— of the members of each branch."

On the motion of Mr. Gerry of Massachusetts, this resolution was amended so as to stand pretty much as the veto clause now does, (except that the blank, expressing the number or proportion of votes necessary to pass a bill in spite of the President's objections, was not filled,) Aye, 8 states, No, 2, (Connecticut and Maryland.) A motion was then made by Mr. Wilson of Pennsylvania, seconded by Mr. Madison, to reinsert

the words, "and a convenient number of the national Judiciary," and being voted out of order on that day, was again made on the following day; on which occasion Mr. Madison made the best speech which was made at all upon the subject, in favor of the motion; which was finally negatived, Virginia, New York, Connecticut, Aye, 3; Massachusetts, New Jersey, Pennsylvania, Delaware, Maryland, N. Carolina, S. Carolina, Georgia, No, 8.

The objections made to joining the Judiciary with the Executive, as a council of Revision, were, to enumerate them—

1. "That the Judiciary would have a sufficient check against encroachments on their own department, by their exposition of the laws which involved a power of deciding on their constitutionality."—[Gerry of Massachusetts.

2. That it was quite foreign from the nature of their office, to make them judges of the policy of public measures.—[Gerry and Dickinson.

3. That the judges ought to be able to expound the law as it should come before them, free from the bias of having participated in its formation. — [King, Mass.

4. That it might safely be entrusted to the Executive, who would need it for *self-protection and strength*, and would seldom use it, less often even than a King of Great Britain. — [Gerry and the Federalist.

5. That the Executive ought not to be able to divide the responsibility with the Judiciary. — [Gerry, King, Dickinson, Pinckney.

6. That there was danger of a corrupt and dangerous combination of the Executive and Judiciary from their being so often associated. — [Federalist.

Of these objections to Mr. Randolph's plan, it is obvious that the 2d, 3d, 5th, and 6th are entirely obviated by the differences between my plan and his.

The 2d, because it makes the judiciary judges only of the *constitutionality*, and not "*of the policy* of public measures."

The 3d, because the questions of policy and constitutionality not being mixed up, the judges would come to the con-

sideration of the question of constitutionality, as free from bias as when the question is presented to them by the parties to a suit. There would be the same conflicting opinions and influences to be conciliated, and the authority, by which they would be supported or opposed, would be the same. The danger of bias does not indeed apply to the question of constitutionality, but to those questions of policy and of sectional and party interest, concerning which the opinions of those who agitate them become exaggerated in the heat of discussion. But it is not easy to see why the Judiciary should not approach the simple question of the constitutionality of a bill, then presented to them for the first time, and separated from every other consideration, with a judgment as unbiased, before, as after its passage; or what difference it would make at what precise point in the flight of time they should come to its consideration. There would be an obvious advantage in having the question of constitutionality decided upon before a bill passes into a law — before any expenses are incurred or interests staked upon it. There would then be no objection to their being *biased* by their own decision and action in the matter, but on the contrary, an obligation on them to be *entirely governed* by it. The President might even take advantage of this arrangement to have the question of constitutionality settled, in all cases where there was any doubt about it, at this much more proper and economical stage of the legislative process, by a *pro formâ* return of a bill as unconstitutional, merely with a view of bringing it then and at once before the final arbiters of the Constitution.

The 5th objection is obviated, because, although the veto power is divided, the *responsibility* is not, the Judiciary and the Executive having each to take the whole responsibility of the entirely distinct and separate questions assigned under this distribution to each.

The 6th objection is obviated by the same division, and all dangerous and corrupt combination avoided by their not being associated at all.

There remain then only the 1st and 4th objections, to which

the plan now proposed is subject, in common with that of Mr. Randolph.

These two, which I shall discuss together, because the considerations upon which they are founded hang together and relate to each other, rest substantially upon the four others, and, those being removed, these must fall with them. The reasoning is, that there being those objections, either to joining the Judiciary with the Executive in the revision of bills, or allowing the Judiciary to revise them at all, before they become a law, it will answer the same purpose to give that department the power of declaring them unconstitutional after they have passed into laws; and that, therefore, as there only remains the Executive department to entrust this power with, and considering that this department will be feeble, — that its hands will rather need strengthening, than be prone to usurpation, — the power thus in search of a location will find there a safe place of deposit. The experiment has proved the incorrectness of the last position, which at the time of the Convention was entirely matter of theory, and has shown that the Executive is the only part of the national government which has preserved, and indeed increased, its powers; that while every other part has been growing weaker, that alone has been growing stronger, and chiefly through the instrumentality of this very prerogative, — a prerogative which, however less formidable when dealing only with matters of expediency and mere policy, cannot fail to strike every imagination as more awful every time it lifts its colossal form within the precincts of the Constitution, and entwines its gigantic arms, whether for support or overthrow, around the pillars upon which it rests.

Mr. Clay has, I think, in his able speech delivered on the 21st of January, demonstrated the tendency to increase of this power. But even supposing that it is only doubtful, whether it is unsafe to entrust the Executive with a power so immense and so arbitrary, I think it can be shown, that the Executive is for other reasons and essentially as unfit to decide questions of constitutionality, as the Judiciary of pol-

icy ; that the Judiciary is essentially and from its very composition the most competent judge of such questions ; that that body's having the decision of these questions, after the passage of laws, is no reason for their not having the decision of them, when the question comes up before their passage, but that there is a manifest injustice in giving them the decision in one case unless in both ; and that, by adopting the plan here proposed, we not only get rid of the objections to that of Mr. Randolph, but we also thereby get rid of the necessity of running any risk ; and we place every question of constitutionality, however it may come up, in hands acknowledged to be the most competent, and we restore justice and consistency to a very important part of the Constitution.

Taking, for the present, as admitted, that the Supreme Court is more fit to be trusted with the final decision of the constitutionality of a law, is there any reason why that tribunal should not have the decision of that question before the passage of a bill, merely because, if it becomes a law, they can negative it afterward ? Is there any reason, because they have the power to negative it finally, that the Executive should have the power to negative it first ? I think not. On the contrary, I think it manifestly unjust, and for this simple reason. In giving such a power to the Executive, you confer upon the minority a right which you deny to the majority, — that of appealing in this constitutional controversy to that tribunal, which is acknowledged by all to be the wisest and safest interpreter and protector of the Constitution ; or, what is the same thing, you make it optional with the President whether they shall have that appeal.

If the Supreme Court of the United States are fittest to be entrusted with the interpretation of the Constitution as between citizen and citizen, it is difficult to see why it is not as between party and party. If it can be appealed to by the minority, or by an individual of a minority, to annul *a law* wrongfully supposed to be authorized by the Constitution, after that law has been sanctioned by the Legislature and the Executive, why should it not be appealed to by the majority

to annul an *objection* to a law wrongfully supposed to be authorized by the Constitution? If it is the best protector of our negative rights, why not also of our positive rights under the Constitution? Why should it not have the power to enforce a legislative right, as well as to prohibit a legislative wrong? Why not as well to develop and promote the benefits, as to prevent the violation and abuse of the Constitution? Why should it not have a vivifying and fructifying virtue, as well as a merely sanatory? Why should it not be made instrumental in forcing the Constitution to yield its natural and proper fruit, as well as to prevent the grafting on it of that which its nature refuses?

The Constitution was entered into by the people for the accomplishment of certain objects, which could not be effected under the Federal government, and which may fairly be considered as the moving considerations and indefeasible conditions of the compact which it embodies; and if a majority of these, through their representatives, claim by the passage of a bill a supposed benefit, as one of the objects of the Constitution, their right to that benefit becomes as perfect under the Constitution, as that of the minority who are opposed to it, to be protected against it, if it really is not among those objects; and there is a manifest inconsistency and injustice in giving, in this cause between the two, to the minority two appeals, — first to the Executive and then to the Judiciary, while the majority have only the right of appeal to the Executive.

Let us suppose, for instance, that one of the objects of the United States *really was* (as Mr. Madison asserts in the introduction to his report of the debates in the Federal Convention, and as Mr. Randolph of Virginia informed, uncontradicted, the Convention itself, in the speech with which he opened the great subject of their mission,) to acquire the necessary powers, not attainable under the Confederation, for "*the counteraction of the commercial regulations of other States;*" let us suppose that the majority of the people, by the passage of a bill for a protective tariff, claim the exercise

of this power as one of the various benefits of which in their former isolated situation they were incapable of attaining, and, to secure which, was one of the moving considerations of the Constitution; let us suppose that Mr. Calhoun is President, (a supposition *once* not thought monstrous,) — but at any rate, let us take this extreme case, which unites in a supposition circumstances which were not only singly possible, but connectedly probable, and altogether within the compass of an easy and probable combination of political chances, and which puts together the cause and the case of the most extraordinary instance in our political history, of the extent to which, even in an intellect of high order, "the resentment of baffled power" —

> "The high disdain from sense of injured merit,
> * * * the unconquerable will,
> And study of revenge, immortal hate,
> And courage never to submit or yield,
> And what is else not to be overcome,"

may paralyze the powers of reason; and how completely the insane inspirations of party may wipe away from the tablet of the memory

> "All saws of book, all forms, all pressures past,
> That use and occupation copied there,
> Till their commandment all *alone* doth live
> Within the book and volume of the brain."

Let us suppose that the question thus raised, the claim of right thus made, comes to be decided by Mr. Calhoun. Does not the reason, the sense of justice, the common sense of any man, revolt at the idea, that his judgment against the majority must be decisive; that their power to claim this benefit from the Constitution, according to their understanding, must be dependent upon all the infirmities of understanding and of temper, even of so distinguished an individual; upon their being in accordance with the theories he may have conceived, the engagements he may have entered into, the pledges he may have given in the course of a long political life; upon his own private interests, or of that of his party or section of the country; upon his prejudices, his ca-

prices, his passions; and that he should have it in his power to prevent them by his will alone from appealing to that source of justice, which is open to the minority and to every one of them, at all events?

It may be suggested that, in the case supposed, the right of the minority ought to have this advantage, because their action is merely negative, while that of the majority is positive. The majority, they say, in such a case, lay claim to some new benefit which they have not before enjoyed, and not merely to the continuance of those of which they were before in possession, — and if they prevail, they will be better off, and the minority worse off than they were before; whereas, if the minority prevail, both parties will be at least as well off as before. There is, in this view of the matter, a distinction to be made between an objection offered on the ground of *policy*, and one offered on the ground of *constitutionality*, and on account of which, there should be a distinction made between the mode of their decision. When an objection is made on the ground of constitutionality, it is a question of right, independent of present circumstances and present expediency. It refers us to a past contract already agreed to, and founded upon events past and out of the question, not as grounds of interpretation, but as grounds of action. It is an objection which seeks to overrule and preclude the general principle of all society, the social law of nature, that the will and the interest of the majority must rule, upon the ground that they have precluded themselves by a former contract founded on a past state of interests from the enjoyment of this right. Issue is joined between the two parties for the first time on the interpretation of this contract on this new point. The majority ought then to have an equal right to show that they have not precluded themselves, as the minority to show the contrary. It is a question of which the premises are certain, and therefore capable of being logically, and certainly, and judicially decided; and not one of facts, or policy, of which all the premises are uncertain, and matter of speculation, hypothesis, and conjecture. It is *not* the case of

two parties, between whom no relationship already exists, and no consideration has passed, and one of whom, if he does not effect his object, is already as well off, at least, as he was before. It is a case where one party claims a right upon the construction of an old contract, of which the consideration is already passed, and where the party, who does not get his right, would be worse off than he would be without the relationship. It is an issue joined upon a right supposed to be perfect on both sides, of which the right on both sides is equally perfect, and ought to be weighed in equal scales. It is not the case of two persons entirely uncommitted toward each other, having no claims upon each other, and who, if they do not agree, will stand where they did before; but of two persons settling the details of an arrangement, of which the general principles have before been agreed upon, and appealing to them as those by which alone, and by which altogether, they must be guided.

Let us now revert to the question, whether or not the Supreme Court is the fittest tribunal for the interpretation of the Constitution, the affirmative of which has been thus far taken for granted; a question which has been so generally answered in the same sense, that I am almost tempted to assume it.

The Supreme Court of the United States is the department of the government, which has so far best and most nearly fulfilled the sanguine hopes which the Federal Convention too enthusiastically anticipated from the work of their hands. It is the part of our government, which is the least subject to the constitutional infirmities and disorders of the rest, and whose judicial habits alone are a corrective against the errors of highly democratic temperament; which is the highest raised above those exhalations of party and of sectional interests which obscure the judgment and the conscience of men in public life. It is an institution to which all look up as the key-stone of the social edifice, — balancing the adverse leanings of all its parts, yet weighing oppressively on none. Such is the mode of its formation, that it unites all the elements of wisdom, justice, and impartiality as "unmixed with baser

matter," as the infirmities of human nature and the influence of an excessively democratic government will allow. Gradual in its formation, deriving its origin from all parties, it represents the wisdom of several generations, from which the passion has been constantly and every day evaporating. Thrown out at different and distant points along the rapid and violent current of party politics, the agitations that have thrown them upon the surface have passed away. They represent the most judicious minds of all the parties, which have succeeded each other in power. Having passed through those infantile diseases of young politicians which rarely return, even if the same questions which once produced them should again come up, — they will find in them minds whose susceptibility to the convulsions which they excite has been already exhausted. Isolated from its active agents by the distinct nature of their functions, they have witnessed the working of every part of the Constitution in its times of strength and of weakness, — of over excitement and of exhaustion, and have learned the bearing, the proportion, the defects, and the efficacy of every part. Accustomed to consult and to defer to the authority of their predecessors, they thus unite the wisdom of our ancestors with that of every existing generation.

The Executive, on the other hand, is the man of one time, and that the present. He comes fresh from the van of a party, saturated, to the exclusion of every other motive, with all the sophistries, the passions, the interests which there come to head. He is after all but one man. He may consult his cabinet, but they are his creatures, his dependents, or if not, all men of the same party, of the same time, of the same age, of the same combination of circumstances, with himself. They are of the same crop of statesmen. The President's decision not only does not offer the same guaranties, and combine the same elements of excellence and impartiality, but even if as correct, could never entitle itself to the same respect, or command the same general acquiescence with a decision of the Supreme Court. "No individual," said Mr. Madison, in recommending to the Convention to join a portion of the

Supreme Court with the President, as a Council of Revision, "no individual citizen can possess that settled preëminence in the eyes of the rest, that weight of property, that personal interest against betraying the national interest, which appertain to an hereditary magistrate. In a republic, personal merit alone could be the ground of political exaltation; but it would rarely happen that this merit would be so preëminent as to produce universal acquiescence. The executive magistrate would be envied and assailed by disappointed competitors; his firmness, therefore, would need support. He would not possess those great emoluments from his station, nor that permanent stake in the public interest, which would place him out of the reach of foreign corruption. He would stand in need, therefore, of being controlled as well as supported. An association of the judges in his revisionary functions would both double the advantage and diminish the danger."

So far the fears of the members of the Convention who were opposed to giving the President this power, as to its danger, have been fully realized. The power of the Executive has, as they anticipated, been constantly tending to increase, and the Constitution to verge toward an elective monarchy, not only in the hands of that man of iron will, well named the Roman, who possessed the irresistible instinct, but fortunately not the intelligent purpose of usurpation, but in the hands of successors. A feeble hand can retain what it requires a strong one first to possess itself of, and an impulse, which agrees so well not only with the grandeur but with the littleness of the human mind, and with which vanity or ambition equally coöperates, once given, is easily kept up.

Whatever may be the doubt as to the expediency of entrusting the President with the decisions of questions of policy, the Constitution is too sacred and important an instrument, to be entrusted to the arbitrary interpretation of a series of individuals, never acknowledging, and often pledged to dispute, the authority of their predecessors, bound by no precedents, guided by no settled principles of interpretation. The Constitution is a law, a written law, and the practice of all ages,

from the most remote antiquity, shows it to be the result of an universal experience, that a code of law, to be an instrument of justice, must have for an appendix a code of interpretation. The instinct of justice, perhaps of self-preservation and of self-respect, has recommended to the most arbitrary tribunals a submission to their own decisions, and an implicit obedience to their own customs. The foot of the President of the United States is no better a measure for the constitutional rights of a great nation, than the foot of the Chancellor of England for the rights in equity of a British subject. A system of constitutional law is as necessary to the preservation of the Constitution, as a system of chancery law to a chancery court; and, unless the power of establishing and declaring it be concentrated in some one organ of the government, unless there be somewhere a power of binding together and fortifying its different parts by a conservative system of interpretation, which no other can unmake as fast as it is declared, the gradual decay and dilapidation of the Constitution, to such an extent that the people of the country will be ready to throw it aside, as unfit for the purposes for which it was contrived, and good for nothing except to produce confusion and dissension, is a result which both reason and experience show to be unavoidable.

The change proposed will, on the contrary, introduce into our Constitution a constructive and conservative principle, to counterbalance that principle of disintegration which is so strongly infused into its whole spirit, and the character of our people; that organ of destructiveness, to use the phraseology of the phrenologist, which is the most prominent development in our political conformation; and which from the Declaration of Independence down to the last Message of the last President, every event and every document has at once exemplified and increased. At present, there is no interpretation so well settled by practice, or so clearly defined by words, no fact so well established, or of which the import is so certain, as to put out of countenance the abstract reasonings, and *à priori* arguments of a new party or a new

interest. A large portion of our political men, having been educated as lawyers, have been too busy in early life to study with proper care even the Administration and Constitution of the country. They have possessed generally comparatively little property, dependent on the systems of policy pursued, and have been accustomed to take all sides on all questions, and to find no decisions too positive for their courage or their ingenuity. Charged with the orders of some party, these political *condottieri*, whose sole accomplishment consists in a certain skill in the weapons of debate, and whose origin is as diverse and as little to be judged of from the service they are in, as that of those celebrated soldiers of fortune, rush into the precincts of the Constitution as if it was a new and unexplored territory, and as much a field for discovery, as if the records of the judiciary and the legislature and the annals of our history were a perfect blank. To men like these the Constitution is not what it is, but what it should have been according to their notions. They make no distinction between the Constitution and the decisions of the Supreme Court, or the dicta of a favorite leader,—the manifesto of a party convention, or the acts of a single national or State legislature. All are equally authoritative for them, equally sacred as materials for argument; nay, it would seem that everything was binding and irrevocable in their eyes, *except* the Constitution and the decision of the Supreme Court.

To make the Supreme Court the judge of the constitutionality of every act of Congress, however that question may present itself, would, it seems to me, be more effectual than any single thing to counteract this mortifying, this disheartening aberration in the spirit of our institutions, and to introduce some form and order, some hierarchy and system, into this jumbled and confused chaos of opinions, laws, dicta, abstractions, and compromises. The very idea of being interrogated and judged by this august tribunal would check the extravagancies of party, and save us the mortification and the bad example of seeing some of our most distinguished men, in the highest stations, rush madly from their spheres to be-

come the leaders of revolt, and the advocates of the most absurd heresies. Instead of beholding the Constitution, which was intended as a mere frame-work, dismantled as fast as it is fitted up, and not only stripped of what has been added to fill out the original design, and complete the harmony of its parts, — all those appropriate adjustments which were necessary to furnish out this noble structure for use and habitation, — but so weakened in its essential parts as to be incapable of giving protection or security to any interests, or even of supporting its own weight; more dilapidated, more untenantable, more crazy than the confederation which preceded it; we should see it gradually completing itself by its own constructive instinct. Every addition made to our national system of constitutional legislation, joined, fitted, and secured by a strong, consistent, and beneficent judicial sanction, would give strength and harmony to the whole. Every day the sentiment of progress would displace that of disorganization and despair, which must now fill the mind of every man of reflection as he surveys the ruin in which he stands; and whatever of this fabric of government was complete we might inhabit with security, and avail ourselves of without misgivings.

But what reasonable hopes can we have of the progress, nay, of the stability of our government, when we hear a vote of the people cited by our chief magistrate as of more authority, in the interpretation of the Constitution, than the decisions of the Supreme Court? I recognise in the people the right to *make*, but not the right to *interpret* the Constitution. I acknowledge in them even the right of Revolution. I know that this right is the fundamental principle of our political science; that the sentence which embodies it is the first one in the text-book of our political religion. I know, that word is the word "that was in the beginning," and was, not to profane a sacred reading, the power omnipotent at the creation of our national existence. But the rights of Revolution, and even of making Constitutions, are powers which are only exerted on extraordinary occasions, and with great solemnity. The people will hesitate to change the Constitution at every

shifting of interest, — because they will be bound by it whenever interest shifts again. But as long as they can alter it by a mere change of interpretation, they do not hesitate to do so; for what they have voted to be unconstitutional to-day, they know they can, for a different purpose and with different interests, vote to be constitutional to-morrow, under a new party organization, and with a different device. A constitution, which can only be changed by a revolution, or by a formal and express change, is tolerably certain; but save us from the revolution of a popular gloss; save us from a constitution whose every-day working is revolution, and which makes a provision for its own perpetual stultification.

It may be thought perhaps, by those who have not reflected seriously upon this tendency of our institutions, that there is a great deal of exaggeration in all this. It is difficult, not to say impossible, to exaggerate the state of prostration in which the Constitution and the country now are; impossible for the most sombre imagination "to cast a browner horror o'er the shade" which hangs over the industry and the administration of this country. That instinct of disintegration, which loosens all the principles which connect the different parts of the social system together, that centrifugal bias which impels with a strong divergence states and individuals, and which perpetually counteracts the compulsive attraction of a mutual necessity, which inspires every man with a horror of everything, right or wrong, which has once been decided, and which carried out would leave him subject to no restraint, except the iron rod of the majority, (or whether of the whole country or a portion of it, which is omnipotent on the spot which he inhabits,) and free to act for himself in every particular of which that majority does not take cognizance, has again reduced the government and the country to a state of prostration and crisis, which forces upon us the most serious consideration of the causes and the remedy.

"La misére," as the French proverb has it, "fait naitre bien de reflexions," moments of misery are very apt to be moments of leisure; and the fruits of such leisure are apt to be reflec-

tions both salutary and bitter. A moment uniting so completely all the conditions of this species of fructification, misery, and leisure, and enough of both, has not occurred in this country since 1787. "The existing state of the country," said Mr. Clay, in his speech of the 21st of January, "presents very much the same aspect as the old Confederation with its weakness and imbecility." In 1787 the Convention were appealed to to prevent the fulfilment of the "prophecies of the American downfall." It is not a very desirable office to be the first to express (if it were possible, after this declaration of Mr. Clay's) a sentiment of treason, — as it might be considered perhaps, to say that this second grand experiment of Republicanism is a total failure. This is a conclusion so mortifying, so discouraging, — even with the little patriotism, the little attachment which we have displayed for the institutions of 1787, — that though it be in the hearts of many, — few can or will see it; and one might in expressing it, address the public as Cassius is imagined to have done Brutus in a case of real conspiracy.

> "Therefore, good *public*, be prepared to hear,
> And, since you cannot see yourself
> So well as by reflection, I, your glass,
> Will modestly discover to yourself
> That of yourself which you yet know not of."

We have in fact advanced as far as it is possible to go, with a hope of return, to that state of dilapidation of the Constitution, of which I have already ventured to predict the possibility, in which the people would be ready to throw it away, as unfit for the purpose for which it is contrived, and good for nothing, except to produce confusion and dissension; and there are already many who, like our forefathers in the last century, are so

> "Groaning under this age's yoke,"

that they would prefer to try some new governmental experiment, rather than to adhere to the present,

> "Under such hard conditions as this time
> Is like to lay upon us."

Whether it has failed or not, as respects ourselves, the grand experiment has certainly failed as respects foreign nations, and in producing that edifying effect which was anticipated upon the cause of liberty. If they thought the Confederation a failure, and were ready "to prophecy the American downfall" then, I see no reason why they should anticipate anything better now that we have made with a better Constitution, and in a second experiment reduced ourselves to the same helpless and desperate condition. The Atlantic bears across its waters, from its western shore, the same tale of distress, the same complaints of a bankrupt treasury, commerce and industry unprotected, destruction of the public credit, annihilation of the currency, dissensions between States, civil war, and an audible cry of disunion.

"Quivi sospiri pianti, ed alti guai
Resonavan per l' aere senza stelle
Deverse lingue, oribille favelle
Paroli di dolore accenti d' ira
Voci alti e fiocchi e suon di man con elle,"

and the conclusion, which they suggest to the transatlantic spectator, may very likely be not inaccurately expressed by the exclamation with which the poet, in the Inferno, introduces his disciple to the scene of those sounds, of which we have borrowed his description, to express those which now pervade our unfortunate country.

"Noi sem venuti al luogo ov' io t' ho detto
Che vedrai le genti dolorose
Ch' hanno perduto 'l ben dello 'ntellettro."

But as regards ourselves, I do not consider this experiment a total failure. But it is only because I know that, with men of energy and of fixed purpose, the failure of the first experiment for a great object generally leads to the trying it again, with new elements and a new mode of treatment; because I think that, but for that excessive confidence in our own invention and resources, unaided by experience, so common in this country, (of which we are likely to be well cured before

long,) there is, after all, a large residuum of common sense; because I am convinced that, as long as the experiment continued to go on at all, there was no hope of its succeeding; and that the only chance for it not to fail was, if I may be allowed the Hibernian exaggeration, for it to fail entirely; that the only way of return, for a "state that is out of joint," to form and order is through chaos; that the principle of entire decay is the principle of regeneration; that a total dissolution alone vivifies the germ of new life; that a new organization can only find strength in the putrescent fermentation of the old; and because reversing the argument of Lucretius, who proved the eternity of the elementary atoms of Nature by that of the system, which, however changed in position and arrangement, by their never ending combinations they perpetually renew and repair, I argue the duration of a government, essentially free and essentially republican in this country, from the immortality of those principles of justice and liberty, which have never before been in combination so unmixed with the heterogeneous fragments of past social systems. However long and violent may be that altercation (that αλληλοτυπεια, to use the expressive word which, in the phraseology of the Epicurean philosophy, expresses a similar process of the physical elements) by which these principles may type and shape themselves to each other, however numerous the forms of combination and the varieties of movement they may try, I believe, that like those Epicurean atoms, of immortal material, and strong in their solid simplicity, "*immortali. premordia corpore, solida pollentia simplicitate,*" they will at last combine themselves into one consistent and harmonious whole.

"Nam certe neque consilio primordia rerum
Ordine se suo quæque sagaci mente locarunt,
Et quos quæque darunt motus pepigere profecto;
Sed, quia multa, modis multis, mutata per omne
Ex infinito nexantur peruta plagis;
Omne genus motus, et cœtus experiundo
Tandem deveniunt in taleis disposituras,
Qualibus hæc rerum consistit summa creata,

Et multos etiam magnos servata per annos
Ut semel in motus conjecta est convenienteis,
Ecficit, ut largis avidum mare fluminis undis
Integrent amnes, et solis terra vapore
Fota novet fetus, summa quoque gens animantum
Floreat, et vivant labentes ætheris ignes."

However correct may be the principles which enter as elements into a constitution, it is impossible that they should at once all fall into their proper places and relationship, and exert their right power and influence. It is not within the power of any man, or any set of men, with any models now known, or even with what might be a perfect model for a different state of society, to work up the best elementary principles in the world into a perfect government. To pass through a long series of ages, a government must accommodate itself to them all. Mere invention cannot complete it, however well it may be supplied with material, but it must be in some degree the product of events. To say that it shall not borrow something from all ages, is to condemn it to be the contemporary of but one. We are now in such situation that, if we do not make some change in ours, it is to be feared that its contemporary generation is nearly extinct. If we do not do something at least to restore it where it was, and to keep it there safe from the attacks of States and parties, — and there is nothing which will do this so effectually as the proposed change in the Constitution, — it is time to abandon it altogether. Any constitution would be better than one that makes no provisions for its own preservation and interpretation. So far from its being *good enough*, — which is always the great argument against any change which is proposed, — a constitution which cannot defend itself is good for nothing. If it cannot protect itself, how can it protect those who look to it for protection and aid? "I could demonstrate," said Mr. Clay, "if this were the time and occasion, that there has been an abandonment of its just powers in relation to the States." That is not the worst of it. Those just powers have been violently wrested from it by the States. If they had been abandoned, they could be resumed. If they had been laid

aside, they could be again taken up. But they have been wrested from them by hands which party and sectional interests have made stronger than theirs; and because they had no appropriate organ to define and proclaim them, and to call imperatively upon the other branches of the government to maintain them, no seat of consciousness, where a sense of the identity of the Constitution might be entertained, which might give unity, consistency, and a sort of individuality to its acts and principles, and create as it were a soul under its ribs of death. The States have been the great enemies, the depredators upon the power of the Union. The sentiment of allegiance to the States has been kept up at the expense of that nobler and more enlarged one which was due to the country, because to flatter the interest of the narrow circle which has it in its power to raise the ambitious to some ephemeral and every-day cheapening distinction, the most efficient means has been to raise the cry of State Rights. For my part I am sick of the cry of State Rights; it is the device of limited understanding and narrow souls, who cannot take in what there really is grand in the character, what there is really worthy of an enthusiastic patriotism in the destiny, whether political or industrial, of the country. Much as I find that is respectable and honorable in the comparatively long history of Massachusetts, I see nothing really glorious in our history or our destiny, which is not connected with that of the country. We are not like to see any glory, any respectability, or even any prosperity, until the cry of our Country shall become as magical and as popular as that of State Rights has been. It is time the whole country was sick of that, and of all the other senseless cries, which have brought us into the humiliating position in which we are, — of those much abused and misapplied cries of State Rights and of Liberty, and should raise at length those more appropriate to our situation, "The Union and Taxation." There is no sense in raising the cry of mad dog when your house is on fire. The cry should point to the danger. The cry of State Rights may be continued until the Union is destroyed, and that of Liberty until it becomes impossible to punish any crime or enforce any duty.

And can it be supposed that the perpetual unsettling of political principles does not operate by analogy upon the moral? Can it be supposed that the sophistry, which is perpetually undermining the social contract, is without its effect upon the sanctity of individual and moral obligations; that a people so peculiarly political in their ideas, and whose chief religion is their political faith, do not apply the logic of the Capitol to the casuistry of private life? Is there no connexion between our political and our commercial demoralization; none between the stolid bankruptcy of the Treasury and the reckless insolvency of individuals? If we could call up the past generation, would the remonstrance, which the Congress of 1789 might be supposed to make to that now in session, differ materially from that which the square-toed and silver-buckled merchant of the same period might address to the merchants of 1842?

It is already a sufficiently serious difficulty in this country that, what with the perpetual changes in our public men, and in the interests which they represent, and what with their want of a proper political education, and that headlong experimental habit which leads every man to try everything, (which is produced by the rapid changes of condition and of fortune, the violent and injurious fermentation of society, — mixing up all classes and confounding all the distinctions of education and occupation,) we have already lost all those practical rules of administration, which correspond to the mere manual skill in the other arts of life, and which should not be merely in the head but at the fingers' ends of statesmen, and which individuals can only make themselves familiar with, as nations have learned them, by practice. Our system lays up no maxims of state, compiles no manual of administration. It derides the craft of kings and councils. The youthful and yet undeveloped civilization of this country presents the exact extreme of the social immobility of those mummied oriental despotisms, of which the embalmed body often survives for centuries after the inventive genius, the soul which breathed the breath of life into their arts and in-

dustry, and whose vivifying stimulus developed their whole social organization, is extinct, or metempsichosized perhaps, according to their own theory, into some newer national existence. In those countries the same employments descend unchanged from generation to generation, from sire to son ; here a single life is often sufficient for every occupation. In them the rules and methods, the physical results of civilization, survive the animating mind; while here the mind exists, able and destined perhaps to animate an immense and highly organized civilization, but which has as yet not put on its mortality, — not assumed those forms of social organization in which it is to be embodied. This condition of the social development has a tendency to generalize all occupations, and to equalize the qualifications which they require. There are no particular modes, no established processes, and no apprenticeship required for the performance of any. This is not an avowed principle, but merely a secret instinct, which is constantly controlled by the experience and the conservatism of established interests, which prevent its acquiring the proclaimed authority and acknowledged power of a maxim of conduct, and which no doubt will eventually convert an element of disorder to a principle of power. There is no better field for the vagaries of this unembodied spirit of liberty, none better for the exercise of this national empiricism, than that of legislation ; and no better exemplification of its consequences, than the present predicament of the government. With a population of about 3,000,000, and an annual income of about eight to ten millions only, enfeebled and exhausted by a long war for their very existence, with a new and perfectly experimental government, in a few years Mr. Hamilton's administration negotiated the 5 per cent stock of this country, which then owed some seventy millions, at par. In 1842, a government which has been in existence more than half a century, with a population of some 17,000,000, and which doubtless with a similar taxation would give more than fifty millions, without debt, and, after having paid one hundred and twenty-three millions of debt, is unable to borrow

some twelve millions at 6 per cent, — when it could be demonstrated that, with a proper administration of the finances, they could raise ten times the amount at 5 per cent.

Doubtless this difficulty, however serious, is one which is inherent in the present state of our social organization, and which our Constitution neither causes nor can cure. But it is plain that this uncertainty in the mode of their administration is increased very much by the uncertainty of the powers themselves, and that some provision must be made for ascertaining and giving surety to those powers, before any method can be adopted of carrying them into effect. Our Constitution was contrived for the express purpose of rescuing the country from just such a situation as we are now in; and it is impossible to believe that, properly administered, it would not have prevented the total relapse which has now taken place; or that this would have taken place, had it been properly provided in its own mechanism, with some power which should give constancy and perpetuity to its motion. It is the uncertainty of essential parts which has thus paralyzed it. What great power is there which has been exercised by our government, affecting the great interests of the country, even those expressly named as the objects of its formation, which has not been affirmed, impeached, and reaffirmed, until it has lost all efficacy for good, — and until all confidence has been lost in its permanence, or in the possibility of its being made permanent?

Another advantage of the proposed change in our Constitution is the necessity it would create of *separating* the questions of constitutionality and of policy, and of presenting the former, eliminated from all the other considerations in which it is often and sometimes studiously perhaps enveloped. To borrow an illustration from the rules of special pleading, the altercations of the parties in controversy would necessarily involve distinct issues of right or of expediency, to be separately considered and decided, each on its own merits. It is sometimes difficult even for those who are so disposed to make up properly these distinct issues; but it is easy enough

so to confuse them as to render the distinction invisible to the people; and to appear to do out of a regard to the Constitution what no other motive could justify. The genius of the Constitution is often invoked, so studiously enveloped in a cloud of other considerations, that it is impossible to see whether he wears a smile or a frown. There is a certain theoretical sacredness very properly attached to the Constitution as the charter of our liberties, which makes each man's interpretation of it a sort of religion, and his constitutional creed a matter for his private conscience only; which brings all the questions which grow out of it within that circle of individual responsibility, which admits of no delegation, and which makes obstinacy faith, and the insubordination to authority martyrdom. In a royal government this difficulty might be surmounted. A king sometimes deputes the custody of his conscience, as he does that of his seal, to his high officers; but in our republic, not even those high priests of the Constitution, the Judges of the Supreme Court, not even the most venerable of their chiefs, can be trusted to be the the keepers of the conscience of an American President. The most bigoted of monarchs have allowed the opinion of their ghostly confessors to stand between their conscience and their God; but our Presidents, with a reverence more devout, with an awe more oppressive for the divinity of the Constitution, have often not submitted to any mediation between their consciences and that sacred instrument. By removing the question of the constitutionality entirely from the consideration of the President, we shall bring his conscience, in the use of the Veto, down to the level, place it on a more easy footing with the rest of his faculties, which it should at least consult before it decides, and divest it of that awful religious prestige which seems to frighten them into silence. If he really have the presumption to think himself wiser than his contemporaries and predecessors, or if he is really actuated by any other interest than that of his whole country, the flimsy pretext of a delicate conscience can no longer be made to cover the vanity of the one, or the criminality of the other motive.

A further advantage of the plan proposed is, that it furnishes the best remedy for the very danger, to guard against which was the principal object of giving the veto power to the President; for which alone it was considered indispensable; for which alone (so far as we can believe the most positive assertions of its contrivers) it was expected or intended to be used; I mean that of encroachment of the Legislature upon the Executive department. I shall presently take occasion to maintain that a very obvious *construction* would have given the Executive a Veto for the purpose of resisting such an encroachment, and that, therefore, the express grant of it was clearly superfluous. However that may be, such an encroachment would certainly give rise to a constitutional question, which, according to the plan now proposed, would be a case for reference to the Supreme Court. And what way can be imagined so proper to terminate a dispute pregnant with so much danger and confusion, and that in a way to make the termination of a single difficulty prevent the recurrence of all similar ones for the future?

I come now to the subject of the Veto upon the Legislative power in mere matters of policy. If it be thought necessary that the President should have it in his power, in such cases, to throw the weight of his opinion into the scales in which public measures are to be weighed, it would be better that the weight should be measured by some proportion growing out of the mechanism of our government. The second clause of the amendment proposed would prevent any law passing, for which there should not be a majority of one entire State, as expressed by two modes of representation, and is proposed as compromise between the two extremes of opinion on the subject, and with a view to conciliate the favor of the public to that much more important part of the proposed amendment, which relates to the objections of unconstitutionality.

But, I must confess, I adhere strongly, as to this branch of the Veto Power, to Mr. Clay's plan, which would merely give

the President a right, where there is no constitutional objections, to express his opinions, and the ground of them ; to protest against, but not to overrule a majority of Congress. Mr. Clay has, (without considering whether the Supreme Court might not very properly be substituted in the place of the President as to a *part* of the veto power,) given to the principal arguments, why he should not possess in an absolute and final manner any portion of it, all the force of his eloquence, experience, and influence, to which it is impossible to add anything ; but there are one or two additional considerations which seem to me to strengthen his conclusions.

And first, as to those arguments which have been drawn from the example of other nations, and which led the framers of our Constitution to fear that it would be unsafe not to give the Executive the check upon the Legislatures, a fear which has been handed down to the present time.

A great deal has been said of the origin and history of the Veto, which, it appears to me, is about as philosophical a subject for historical investigation, as that of the celebrated work of Professor Teüffelsdröch, of Weisnichtwo, entitled " Clothes, their origin and influence." Wherever there exists more than one order in a state, each one of them must have, whatever may be the mode of exerting it, a power of negativing the acts of the other. This power is essentially the veto power. It is the power of preventing the passage of a law by the mere expression of dissent. To this power, wherever it has been exercised by one or two officers, has been given, as a name, the very expressive word, made use of by the Roman Tribunes in exercising a power of this nature deputed to them, although, in fact, there is no similarity, either in the origin, nature, extent, effect, or mode of exercising any of those rights of negative, and that of the Roman Tribunes. The power of the Roman Tribunes, which was called "Intercessio," and not Veto, was finally exercised by as many as ten tribunes. It was exercised to arrest judicial and executive, as well as legislative acts. It could be exercised upon

every assembly and every officer of the Republic, except a Dictator, (and for the time, the Decemvirs,) and even upon the other Tribunes. It was, in short, substantially the right which one order of the Romans, the Plebeians, had of arresting every function of a government chiefly carried on by the other distinct order of the State, that of the Nobility, or Patricians.

In the reign of the last but one of the Roman Kings, says the tradition which history has adopted, a change was made in the mode of organizing the assemblies of the Populus, or whole people, (an assembly which alone could pass laws which were binding on the whole people,) the effect of which was, by the manner of taking the votes by classes, to give to the highest class, composed of the richest citizens, a vote equal to that of all the other classes put together, and with that of the next class, the Knights, consisting of the next richest citizens, a decided majority. For the purpose of forming these classes, a census was taken every five years, the principle of which was to proportion the power of each citizen to the portion of the public burdens which he sustained. The same census determined also the composition of the Senate, which was based upon the same principle, with the exception, that that body included also those who had borne certain offices. The Roman Aristocracy then, or rather Plutocracy, (which was no longer a hereditary Nobility, or a charter Nobility, but, the mass of it, a census Nobility, with a slight infusion by means of these officers of an elective Nobility,) not only had the control in these assemblies; but, as these assemblies were not deliberative, but only decided by yea and nay the laws which had already been discussed and matured in the Senate, the Senate had thus the initiative even in these assemblies. Moreover, as the person who presided over these assemblies, who was also a Patrician, could refuse to propose any law if he pleased; and as the College of Augurs possessed the power of preventing meetings by declaring the omens unfavorable; there were no less

than three distinct veto powers, besides that of the Tribunes. The result of the secession of Mons Sacer, which was a real Revolution, was to give the Plebeians a power, which they exercised through the Tribunes (officers always on the alert, and elected chiefly for that purpose) of concurring in the formation of laws. It created in fact a new order in the State. Before that revolution the Plebeians could not be called an order, as they had no political power. After this there were two orders instead of one, each of which possessed the power, essential to its existence as an order of the State, of negativing the acts of the other.

If then there be any force in this Institution as an example for us, the argument reduced to its most naked logical terms is this. Because it was necessary to the liberty of the Plebeians of Rome, that they should have a universal negative upon the acts of a government carried on entirely by the Aristocracy, — therefore it is essential to the liberty of the American People, that they should give to one of their representatives a right to annul the acts of another of their representatives; because in a country in which there were two entirely distinct and independent orders, each possessing and bestowing entirely distinct powers, having even a distinct legislation, one had a negative upon the other, in all acts operating upon both, which it exercised by means of its executive officer, therefore the American People, where there is but one order, which is perfectly homogeneous in its composition, where all the various powers of the State are drawn from the same fund, and represent the same persons, should give to their representatives, for one purpose, an absolute control over those selected for another purpose, to him, who represents them in mass, the negative upon those who represent them in detail, — to their executive representative, chosen for his fitness for this especial function, an absolute prohibitory power over the legislative acts of their legislative representatives, chosen especially from their capacity to represent all the interests to be affected by legislation. To

make the analogy perfect, we should give the President a Veto upon all the judgments of the Supreme Court of the United States. Nay, the Executive should be composed of from two to ten persons, in order that they might veto each other, and that this power of disorder in the State might possess all the vigor which it did under the Roman Government.

Even supposing that there were any analogy between the two cases, I see nothing in the Roman Constitution, (if constitution can be called that confused and ever varying combination of discordant powers, of which it is almost impossible at the present time to understand the working,) or in the operation of this particular institution, which should be imitated by us. In the first place, because the Roman was the worst Republican Government that ever existed; and in the second place, because the spirit of their institutions, the genius of their people, the character of their social organization, and the sources of their activity and greatness are totally different from ours. The Romans were a military, we are an industrial people. In Rome the elements of greatness were in the character, and in this country in the mind; there in the moral sentiments, here in the intellectual faculties; there they existed chiefly in the aristocracy, here they are diffused through the whole people; there they were simple, here they are complex. In Rome the first cause, the fructifying principle of her greatness was that military courage and genius, — a spirit and genius for domination, that hardihood and unbending obstinacy of purpose, which belonged to the Roman Patrician, and of which the Plebeian was the mere instrument and material. This warlike spirit was the real remedy for all the defects, the cure for all the disorders, the source of all the greatness, and at the same time the element of the destruction of the liberty of the Republic. This alone preserved a forced harmony among its discordant powers; serving as a gigantic keystone, weighing down and keeping firmly in their places the

unfitted and shapeless parts. This alone, by bringing together, not by the creative and attractive powers of industry, but by the compulsion of conquest, the spoils of the universe, and leading captive in its triumphal march those arts which were not native there, made Italy a garden, and Rome the mart of the world, and the centre of its civilization. The history of the military power embodies the whole history, both foreign and domestic, of ancient Rome, as the history of the Catholic religion does that of modern. Whatever spirit of republicanism there was in ancient Rome, existed in the spirit of the aristocracy itself; it was a freedom like that so called freedom of the Venetian Republic ; the freedom, the equal rights of an aristocracy ; and the people, as they were the instruments only of its grandeur, so they became the instruments of its destruction. In the contest between the republic and despotism, the aristocracy was the enemy, the people the ally, of successive usurpers. The massacre of the Senate, and the corruption of the people, was the recipe of all who attacked the liberty of the republic from Sylla to Octavius. As long as the aristocracy continued to agree in dividing power among themselves, Roman liberty continued to exist ; but as soon as the development of their military organization gave a preponderance to one or two over the rest ; as soon as the power of the Senate to resist was exhausted ; as soon as the Senate became a mere council-board of a Dictator, an absolute despotism succeeded, which the Tribunes had not the will nor the power to prevent. How absurd then all this twattle about the sacred mountain ; this attempt to represent the Veto as the guardian of the liberties of the Roman people ! It is one of the most lamentable specimens certainly of that species of argument so often addressed to the American people, the object of which is to impose by words on those who are ignorant of things, or know just enough to be easily misled. On which of those great historical days, in which the liberty of the Roman people was really attacked, was the momentous word

"Veto" pronounced in its defence? Was it on that bloody day, on which Sylla declared, in haranguing the people, "that he proscribed all those of his enemies that he could remember, and that he would proscribe the rest as fast as they came to his recollection; but that he would not forgive one of them?" Was it on that, on which Cæsar was "thrice offered, and thrice refused" a kingly crown? Or on that still more decisive of the destiny of the republic, on which the Senate declined the abdication, and conferred the title, of Augustus? The insurrection of Mons Sacer was a revolt of the instrument against the hand that wielded it, and the power of the Tribunes, which was its result, was a mere perpetuation in the hands of a few of the same insurrectionary power. It was a power of disorder and embarrassment, but not of protection; a power never frankly acknowledged by the real government, the nobility; and which they always had the means of evading and overruling, either by appointing, as they did in the case of the Decemvirs, some extraordinary officers, who were not subject to this authority; by declaring the country in danger, and appointing a Dictator; by appealing (which was a very serious limitation to their authority, analogous to what an appeal to the Constitution might be in the case of the Presidential Veto in this country) to some positive law; or by the more quiet, crafty, and statesmanlike quibble of doing that "*Senatus auctoritate*, by *authority* of the Senate, which the Tribunes had prohibited to be done *Senatus consultu*, by a *decree* of the Senate. By all these means, this insurrectionary power, for it deserves no more august name, which, like all other insurrectionary powers, had in each case only the force given to it by the amount of physical power by which it was backed, was gradually reduced to nothing and disappeared; and when the day of peril for liberty came, was not there to stand up with the Senate and defend her, as did the Senate, and the Senate only, in her last struggles.

In this country, on the contrary, the germs of activity and

of power are equally distributed through the whole homogeneous mass of the people. Whatever grandeur we may attain must be the result of the wonderful diffusion of an active, fertile, and versatile genius. The nervous stimulus in our social organization is from the extremities to the centre, and not from the centre to the extremities. It is not favorable to the preponderance of any particular faculty or propensity, but to the development of all. For the same reason, our liberty, which consists in a distribution of equal rights and equal power through the whole mass of the people, can only be lost, when the people shall have lost their spirit of liberty,— when they shall have become tired of it themselves. There is nothing to create a distinct order of society, against whom a veto power in the hands of their executive officer might prove a protection to the mass of the people. He is, on the contrary, the person to whom the people would be most likely to surrender a liberty that they no longer cared for, and whose prerogatives offer the most complete cover for that arbitrary power, whose own naked forms might excite the blushes of a people who had once been free. It is a matter of universal experience, that an attachment to the forms of liberty survives the love of liberty itself, and that a despotism is always carried on under those of the republic which it succeeds. Our President already possesses the two principal of those powers, which made up the absolute power of Augustus, — those of Imperator, or commander of all the military forces, and of perpetual Tribune ; except only the inviolability, — and that would easily be conferred without any express grant, and without being perceived, by a general adhesion. This would appear to be impossible, to be a mere conjuring up of chimeras to frighten the judgment, if this very inviolability had not already been several times extended to the perpetual tribune of our Constitution ; and if the only attempts, which had been made by the President to stretch power, had not been perfectly successful. The experience of some half a century has proved that, where it is

not fortified by material interests, nothing is so unstable as political faith, no conclusion so uncertain as those of political speculation, and that the revolution of the earth itself, summer and winter, does not create greater changes on any spot on its surface, — changes more inconceivable to the imagination alone, than a single political revolution of the same mind. It is not safe to trust to the feelings of the moment, for we cannot tell how far they may carry us. The only safe way is to remove at once from the Constitution a provision, which affords the pretext and the opportunity for encroaching upon the others, to that department of government which alone, instead of becoming enfeebled, has been growing every day more powerful; which alone has shown an inclination to stretch its powers to their utmost limits, and which so far has afforded the only examples of usurpation.

There is no more connexion, either logical or historical, between the Veto of the Roman tribunes and that of the King of England, than there is between either and that of the American Executive. The triple Veto of the English Constitution — which is nothing more than the necessity to every law of the assent of the three orders of which the State is composed — did not originate in, nor is it justified by, the the right of the Roman Plebeians to negative every governmental act of their aristocratic government; it originated in nothing else but the existence, in their social organization, of three distinct and independent powers, as distinct and independent in their existence and sources, as those of gravity and heat in the physical world, and of whose distinct and independent existence this prohibitory power, this right of assent and dissent is a necessary condition and consequence. And this is the true reason why the King of England so seldom uses his veto power; it is because the only use of it theoretically, as a matter of right, and practically, as a matter of interest, is the defence of his own prerogatives. The King of England has no private interests, no interest identified with those of any particular class or portion of his subjects. His only

interest is the share he has in the general prosperity of the country, — his only wealth a claim upon that of all his subjects. As long, therefore, as the other two orders do not infringe upon his prerogative, he is perfectly willing that they should conciliate their interests in their own way ; and having each a Veto upon the other, they are perfectly competent, so far as the laws and the Constitution go, to protect themselves. The King never interferes in matters of mere policy, nor in point of practice has he the power of doing so, except temporarily. The King's Ministers, his "constitutional advisers," by whose judgment he must be bound, according to the theory of their government, always represent the majority in the House of Commons, and a bill which passes through Parliament is therefore sure to have the assent of the King. The King has, to be sure, the right of dissolving Parliament, and of appealing, by a new election, to the people. This is the only way in which he really exercises a real veto power. He did so, for instance, in the case of Pitt, in 1783, when a ministry, with a parliamentary majority, were turned out, a new ministry appointed, and a new Parliament formed. But if the new Parliament should pursue the same measures, and support the same "constitutional advisers" of the King, by the theory of the English Constitution he would have to be governed by them. It cannot be said that the King of England has any veto power as to mere matters of policy, which the Constitution justifies him in using, or the use of which he would not, if resisted by the two orders be obliged ultimately to abandon. His veto power, which is a matter of precedent, is exactly what that of our President, which is a matter of construction and of precedent, is by the Constitution, what it would be by a fair interpretation, and by the example of all those Presidents, who deserve the name of Statesmen. If the King's prerogative were attacked, there is a reserved dormant right of resistance, which, I think, would equally belong, by implication, to our President, even if the Constitution gave him no formal Veto ; but in

place of which, according to the plan now proposed, he would have an appeal to the Supreme Court of the United States, on the ground of unconstitutionality.

The nearest approach which exists under our Constitution to a real diversity and balance of power and interest, like that of the British and Roman governments, is that which is created by the division of the sum total of sovereignty, which our Constitution makes between the General and State Governments. But even these are only different modes of massing, different modes of summing up and enumerating the same powers and interests. Congress unites, by its two houses, the expression of both. If, therefore, the object be to retard the legislative movement, or to arrive at an accurate expression of the interests and opinions of the country, by varying the modes of estimating and enumerating them, it would seem that the mutual negative of the two houses of Congress is quite sufficient for that purpose, and more in harmony with the theory of our Constitution. If consulted in distinct masses in States, and consulted individually, the answer is the same. Here, it seems to me, is precaution, here is delay, here is accuracy enough ; and I do not see how the result arrived at need to be, or can be corrected by the Executive, who is only a less accurate expression by the same mode of enumeration with that rendered by the House of Representatives. The President can be nothing more than the expression of the dominant opinions of the people upon a few of those prominent and exciting questions, which alone marshalled men into parties at the time of the election ; he only indicates which was the most potent, at the time, of the ingredients of our political cauldron, what "charms of powerful trouble" had been then thrown into the "hell-broth" brewing within it, by the wizards who sing around it, "enchanting all that they put in" with the hope, like those in Macbeth, that they shall "all share i' the gains." It is impossible, in a vast community like the United States, with so many diverse interests, that issue should be joined in the

Presidential election, on more than one or two questions, with any chance of a majority; while the representatives are so identified with every one of the prevailing interests of their own districts, that each vote of that house is about as accurate an expression of those of the whole country upon every question, as it is possible to attain, unless, as they did in Rome, each law should be referred to the ayes and noes of the people themselves, or a new set of tribunes be chosen from each district for every question. But, besides this inferior accuracy as an expression of the interests of the public, the President, differently from the King of England, often has to bias him, either his own, or the interests of his friends, or that of his own particular State.

I do not think, however, that too great facility of legislation — too easy a movement, is the fault of our government. The great faults in our government are at the same time a great slowness, and a great fickleness. We find it very difficult either to get laws passed, or to adhere to them after they are passed. Both defects arise from the great diversity of interests, and a great ignorance of the art of government, which makes those interests difficult to reconcile and difficult to keep reconciled. To throw in this additional and useless obstacle, — this gratuitous difficulty, — having no ground of reason in the nature of the Constitution, — based on no primordial cause, — instead of strengthening a beneficial principle, adds new vigor to a vice in the Constitution, enfeebling and relaxing a machine which already hangs together and moves on with great difficulty.

If the object be to give greater stability to opinions and to policy, and to enable those of one year to exert a salutary control upon those of the succeeding, the Senate is much better adapted to be the vehicle of such a communication than the President. The President just one half of the time necessarily represents the same groupings of opinions and interests with the House of Representatives. He is out of the same batch and leavened with the same leaven. While the

Senate, besides being composed as it is in part of men who have played out the game of politics, — who have exhausted all the chances of political advancement, and who now look only to the permanent good of the country, — the celebrities of one or two generations, — the Patricians in the sense of that word in the primeval days of the Roman Kings, — the fathers of each state ; besides representing different combinations of interests, and being chosen in a different manner, must on an average contain, from the longer term for which they are chosen, a majority of Senators chosen before the Presidential election.

If the object be to correct the errors of a too popular assembly, to serve as a check to a too vigorous democracy, the mode in which the President is elected does not certainly come very well recommended to fulfil that high purpose. He may be taken to be the most vigorous expression always of democracy. The Senate, in the first place, is much more to be relied on for the exercise of this salutary power than the President. The trustworthiness of the President is not even as well guarantied, as that of the most popular branch of Congress. Whatever may be the chances of error in popular elections, the average of the persons chosen in a country, fit to govern itself at all, should be fit and good men. Now in every House of Representatives the chances are averaged and the balance struck. There is, or should be, a perpetual balance in favor of their trustworthiness, and a certainty of a continual preponderance of persons deserving the confidence of the country. But not so with the President. In his case the average must run not only through many years, but through many periods. His responsibility at any given time is not guarantied by the same average of chances, which insures us against the dangers and errors of democracy. Besides, all the causes of error are much stronger in the election of the President, than in any other. The arts of demagogues, the tricks of partisans, the difficulty of ascertaining facts, the unavoidable uncertainties of character,

the contagion of popular enthusiasm, all have greater play and effect. Those brilliant and often superficial qualities, which most easily catch the eye at a distance, and strike the imagination of large masses, differing in their habits and their ideas, is not very well adapted to counterbalance the wisdom of Senates. There are two kinds of characters, each the extreme of each other, and either of which is better adapted than their intermediates, to unite the suffrages of a people of diversified interests and a multifarious morality: one is that comprehensive wisdom and large benevolence, which conceives and harmonizes conflicting interests, and makes them conspire happily together; the other, that selfish and narrow-minded ambition, which neither feels nor adopts strongly any system or any interests, which is indifferent to all but its own ends, and can comprehend nothing but the petty expedients by which they may be advanced. Doubtless it will be rare to have either of these at the White House, — but its duties should be accommodated to either.

Moreover, the President may very well not be choson either for his fitness to be a legislator, or to be an interpreter of the Constitution. The qualities, which adapt or entitle him to fill this office, may and ought to be quite different. He is often chosen from a motive of gratitude for services rendered of a different nature, sometimes, even strange as it may appear in a population actively industrious in its character, for his military talents. Sometimes his election is the result of mere political combinations, or from his possession of what is called, in the slang of the day, his large political capital.

The principal object of the Veto was to enable the Executive to defend its own perogatives. It was feared that this branch of the government would be too weak to defend itself, — that it would be the most feeble of all, and that it would not even have the courage if attacked to resist, unless the Constitution furnished it with the precise mode and instrument of resistance. But with our present experience of the real power and influence of the Presidential office, it is

easy to see, that this provision was quite unnecessary for this purpose, and that the Executive is really strong enough to need no other weapon of defence, than that implied Veto which inures to all separate and independent powers, — that of resistance. If his prerogatives are attacked, let him oppose an absolute refusal to comply, and let him appeal for his justification and support to the people, whom he represents in his executive capacity, as Congress does in a legislative. This is the only mode in which the veto power is acquired in customary governments, where its action is always the most quiet and harmonious, and it would not be the only instance of a constructive Veto under our Constitution. In a country in which the frequency of elections gives to the people such constant opportunities of throwing their weight into the balance of power, and of deciding the disputes which its possession provokes, the increase or diminution of prerogative would depend on the feeling of the people. Both branches are under their protection and surveillance, and according as they thought the powers of either either too large or too small, they would discourage, or favor the encroachment of each upon the other, exactly as they have, hitherto, the usurpations of the States upon the general government, as they will now by a necessary reaction, the resumption by the general government of the powers of which it has been despoiled; unless, as is to be hoped, the adoption of the proposed change in the Constitution should give to the general government the power of repairing itself its own dilapidations, and of effecting by judicial action what the convention attempted by legislative. In this case, the prerogative of the executive will be under the protection of the judiciary, and if there is any danger of their favoring either the executive or legislative they will incline to favor the executive. A question of encroachment will necessarily be a constitutional question, which the executive will always have it in his power to raise in the manner proposed. To give to the executive legislative power, for the purpose of

defending his executive power, to give to this department, in order to enable it to defend its own peculiar powers, a participation in those of another, of which the objects are entirely distinct, and requiring entirely different qualifications for its exercise, does seem to be a most extraordinary mode of producing harmony in the government. So far from having that effect, it is only adding an unnecessary ground for contention to those which are unavoidable. By dividing between them the legislative power, you only add new subjects of dispute to those which existed before between the Legislative and Executive, as to the limits of their separate functions. By making common to both this large field of action, you only furnish them with a larger field for contest; you make the whole province of legislation one immense arena for strife, instead of confining it along the boundary line which should separate the two.

There is yet another pernicious effect of the Veto upon the working of our government, of which we have had recently two very striking examples, and which cannot perhaps be better explained, than by an illustration drawn from that of the English government. It is the advantage of customary constitutions, those which, like the common law, have been formed by the altercation for centuries among themselves of opposing interests and of opposing powers, that there is a greater harmony in the operation, a more complete adaptation to each other of the various parts, than is possible in a mere *à priori* constitution. In such a constitution, all the pivots upon which they turn have moulded themselves to the form, and strengthened themselves to the weight of the parts which they have to support; each one of those parts has accomodated its dimensions and movements to those of each other, and the same sources of power, which first communicated, perpetually entertain its motion. The whole machine moves without any of those jars and interruptions, which, in a government of mere invention, like ours, are unavoidable, until custom and precedent have had time to supply

those minute supplementary wheels, necessary to give smoothness and a proper connexion to the more essential parts. The mode, in which the perpetual coöperation of the Legislative and Executive is secured in England, without the sacrifice of any right of the people, or any prerogative of the crown, by making the command of a majority in the House of Commons an indispensable condition of every ministry, is a beautiful illustration of this species of adaptation. By a mere change of that which connects them, these two great wheels are made to work always together, without the paring away of one hair's breadth from the dimensions, or the loss of one particle of power from either. Either the ministers ask the people for a new parliament, or the parliament asks the crown for a new ministry. Both have thus a power of change, by which they can adapt themselves to, and work into each other. A perpetual govermental action is thus maintained, and a power always maintained capable of carrying on the administration.

But in this country, where the President chooses his advisers, not from their holding the same opinions with the majority of Congress, but because they entertain his own, and in which they are either turned out, or resign the moment they differ from him, often the moment they are capable of cooperating with the Legislative, the only way to make sure of some species of administration, (and any system is better than none at all,) is to enable one to act without the other. The chances are, that the majority in Congress and the Executive will belong to the same party, and in the main agree. If there should be some measures adopted by Congress, of which the President did not approve, though it might be regretted, it would not produce that ill feeling and resentment, which, as at present, break up all that party organization and party allegiance, so necessary to unity and vigor of administration, destroy all concert and harmony, and lead the two to prefer to thwart, rather than to coöperate with each other, and produce that worst of all disturbing and paralyzing effects, a party within a

party, (for the President must always have, of course, a large party of his own adherents, who will rally around him,) and in short make it depend upon the probability of the President, and the majority of the House representing the same majority of the people, whether there is any administration at all. If there was any way in which they could compel him to accede to their system, or he them to accede to his, by an immediate appeal to the people, (which in England can be done in less time than it takes to mature any law in this country,) there would be less evil in this interruption of government; but now, whenever it takes place, it may last for four, and must last for one or two years.

It would be better even for the President to take from him a power, which it often becomes a matter of conscience with him to use for the destruction of his own party, upon whom he depends for the possession of a real power, and for the means of carrying on his government. It would be much better for our President, if he would content himself with the same power which is possessed by the King of England. If he would appoint ministers who would coöperate with Congress, he still would possess, in addition to the influence which the most eminent station and an immense patronage would give him, the best position for exerting the only power which is worthy of the ambition of a man of intellect, that of the weight of his own opinions.

NOTE.

Since the above was prepared for the press, the publication of Mr. Tyler's "exposition," as it has been called, of his reasons for signing the Apportionment Bill, has so completely justified the analysis here made of his opinions, and contains so plain an avowal of those inconceivable doctrines, which he has hitherto only acted upon, that it has almost rendered such an analysis superfluous. The labor of convicting is thrown away by the frank confession of the person accused. Mr. Tyler is going on rapidly in the accomplishment of the destiny, I have assigned to him, of being the instrument for the overthrow of the veto power. One hardly knows whether to be most amused with the child-like simplicity, the innocent candor with which he proclaims principles, which embody the very essence of the most daring, extravagant, wholesale usurpations to be found in the history of the human race, or vexed that such a man should by any caprice of fortune become the Chief Magistrate of this country. Alas for the vanity of human distinctions! that such should be the result, even the accidental result, of the free choice of seventeen millions of intelligent freemen after a half-a-century's schooling in the practice of self-government. There is, however, one circumstance to be noted in this matter in favor of the intelligence of the American people, though not very flattering to Mr. Tyler, — that although this caricature tyrant, for twelve mortal months, has been thus wearing the Despot's mask, and brandishing furiously the most formidable prerogative in the whole executive armory, threatening to demolish everything before him, he has not yet succeeded in alarming anybody. Nobody will be frightened. He produces no more effect in that way, than Tom Thumb on the stage with his very big sword. Although he roars so much louder, and in so much higher a key than a real lion, there is no more trembling than when Master Bottom, for the sake of not frightening the ladies, roared them as "gently as any sucking dove."

If Mr. Tyler had understood the purport of his own doctrines, doubtless he would have kept them as studiously out of sight, as others by whom they have been adopted. We may judge how little importance he attaches to them, from his having sent a document big with these portentous maxims to be stowed away in the archives of state, until some new "illustration of his conscience," to use again the humorous expression of Mr. Adams, should require them to be brought to light. According to the latest and most improved veto practice, it would seem to have become necessary to give a reason not only for not signing, but for signing a bill.

"When I was a member of either house of Congress," says Mr. Tyler, "I acted under the conviction, that to doubt the constitutionality of a law was sufficient to induce me to give my vote against it; but I have not been able to bring myself to believe that a *doubtful opinion* of the Chief Magistrate ought to outweigh the solemnly pronounced will of the Representatives of the People and the States." Poor Mr. Tyler! He found great difficulty, it would seem, in seeing the difference between a veto and a vote. He tried, it seems, to think that a *doubtful opinion* of the Chief Magistrate ought to outweigh the solemnly pronounced will of the Representatives of the People and the States. But he was not able to bring himself to believe it. Really this was unfortunate. Had he succeeded, with his talent for beating up the syllabub of abstractions, he might very easily have raised a doubt upon almost every question, by which he could have made it a matter of conscience to have his own way in everything. If he came so near thinking, however, that a *doubtful opinion* of his was sufficient, he must be convinced, and indeed this is the necessary inference, that *a decided opinion of the Chief Magistrate ought to outweigh the solemnly pronounced will of the Representatives of the People and the States.* Here is, one would think, a pretty broad basis for absolute power. Doubtless it would have been more convenient, could he have persuaded himself of the sufficiency of a doubt for that purpose. He probably finds it difficult to have decided opinions. But men of his sort generally have this compensation, that even their doubtful opinions often appear to be very decided for a moment at least. In the case of the Bank Veto a great deal of doubting, of the most fluctuating, the most yielding nature, suddenly became hardened, by some process of moral chemistry, quite magical in its effects, into the most rigid inflexibility.

It is true, that Mr. Tyler confines the doctrine here announced to constitutional questions. But we have had one example of the easy transition by which he applies the mode of reasoning, which he begins by confining to the Constitution, to obligations which have a different source. It may be very fairly indeed doubted, whether he knows the difference. In the second statement of this doctrine (which to avoid all suspicions that it might be a slip of the pen he makes in the same document) this limitation is no longer inserted. "In approving the Bill," he says, "I flatter myself that a disposition will be perceived on my part to concede to the opinions of Congress in a matter, which may conduce to the good of the country and the stability of its institutions, upon which my opinion is not clear and decided."

Really this is too condescending! Can any body caricature this? Can any body misrepresent this to Mr. Tyler's disadvantage? Mr. Tyler defies caricature or misreprentation by going entirely beyond its reach. Let any one, who thinks that the Constitution is anything but words, — that it has any spirit, that that spirit is the spirit in which it was conceived, and that there is any force in the intentions and purposes with which it was framed, read over the debates which took place in the Convention on the subject of the veto power, and imagine the faces of its members, could this document have been unrolled to them and authenticated as the doctrine of some future President. I ask for no better commentary upon the outrage it commits, upon the insult it offers to the spirit of that Constitution, which Mr. Tyler pretends to consider so sacred.

Mr. Tyler need not, however, have outraged public opinion by declaring, or *insinuating*, that even in the grave case in which he selects, even in "a matter which may conduce to the good of the country and the stability of its institutions," — he would not *concede* to the opinions of Congress "a clear and decided" opinion of his own. For he has refused to make this sacrifice in just such a case. If there ever was a case in which a man, who really had the good of the country at heart, was justified, was called upon to sacrifice his own theories even temporarily, — the case in which Mr. Tyler last refused to do so was the one. If Mr. Tyler was the least of a statesman, he would perceive that his executive are his paramount duties, that his chief obligation to the country is to see that the administration of the government goes on, and goes on uninterruptedly;

he would perceive that the present was a crisis when, for the sake of discharging that great duty, he should have waived something of his prerogative, he should have sacrificed some of his minor obligations, to avoid coming into a collision with the legislative power, which rendered that discharge of duty impossible. He should have got the best legislation he could, and endeavored to make it sufficient for the carrying on of the government. Instead of that, he has violated the Constitution for the sake of producing this very collision, and instead of making the best of bad and insufficient legislation, he has annulled a legislation every way sufficient and proper to enable him to carry on the government, because it was not exactly what he dictated. One can hardly conceive of a hardihood of character not connected with some vast and all-absorbing design, one can hardly conceive of a hardihood of character founded on mere insensibility or ignorance, which can stand dallying with abstractions, while a whole country, goaded by the impatience of a real suffering, is clamoring impatiently to be away on a new enterprise after prosperity.

The doctrine then of this precedent, with the commentaries upon it, as it stands recorded at this present moment on the constitutional rolls of the country, is, that in no case, however grave, can the President yield his clear and decided opinion to the solemnly pronounced will of the Representatives of the People and the States. The question to be decided then is, Has not the practice of those appointed to administer it yet given to this provision of the Constitution an effect, which can no longer be tolerated, and which calls for immediate amendment?